LEGAL ISSUES ON CREDITORS' RIGHTS AND PROTECTIONS IN SINGLE MEMBER COMPANIES

BY

MISS NATCHA RATTAPHAN

A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF MASTER
OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAMS)
FACULTY OF LAW
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ENTITLED

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was approved as partial fulfillment of the requirements for
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ABSTRACT

A single member company is a type of business organisation that can be established by a sole member who has limited liability not exceeding his contribution. Since a single member company has a separate legal entity, it has its own rights and liabilities. This characteristic raises concern among creditors that they will lose their rights for several reasons. The first is that there is a greater potential of business failure because of the inefficient management of the business by a sole member who has absolute control over the company. The second is that the regulations of a single member companies tend to be more relaxed. It is exempted from several duties in order to facilitate small businesses and as a consequence, a single member company can be used as a corporate vehicle for fraudulent purposes.

Since there is currently an attempt to recognise the concept of single member company under Thai jurisdiction, the key to the success of the new legislation is that the law must balance single member companies' benefits and creditors' rights for the greatest mutual interest. This leads to the interesting question of what is the appropriate level of creditors' rights and protections in single member companies. Therefore, the aim of this thesis is to examine company and corporate

insolvency law as a default rule for all companies for the purpose of identifying appropriate regulations for single member companies under Thai jurisdiction.

Based on the study, the current Draft Law on Single Member Companies Act B.E… which was approved by the Council of Ministers on the 24th January, 2017, provides several regulations that reflect the concern about creditors' rights and protections. The interesting issue is that, different from UK law, the existence of a single member companies relies on their sole members. There are certain specific provisions related to the qualifications of sole members which seem to be inconsistent with the characteristic of single member companies. Nevertheless, the provisions on capital maintenance, mandatory disclosure of information regarding the incorporation of single member companies, cancellation of fraudulent acts are appropriate to protect creditors' rights.

It is suggested in this thesis that some regulations under UK law, namely, directors' specific duty to consider creditors' interest could be adopted into Thai law to encourage the protection of creditors. Directors should be liable to make a contribution to the company's assets in the event of a breach of this duty. The restriction on re-use of company names is another approach to prevent the avoidance of this obligation by winding up an insolvent company. Moreover, a company's duty related to accounts, reports and audits should be determined by its size. Finally, single member companies should be enforced to comply with some special procedures on internal management, i.e. to record the sole member's decision and to make a contract with the sole member in writing.

Keywords: Single member companies, One man companies, Creditors' rights and protection

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Symbols/Abbreviations	Terms
SMC	Single Member Company
SME	Small and Medium Enterprises
CCC	The Civil and Commercial Code
CA	Companies Act 2006
IA	Insolvency Act 1986
CDDA	Companies Directors Disqualification Act 1986

CHAPTER 1

INTRODUCTION

1.1 Background and Problems

Businesses grow rapidly in the digitalisation age because of technology. The trend of the business model has changed and there are many small enterprises (SMEs) operated by a sole owner. Technology plays an important role in reducing the necessity of labour and the difficulties involved in managing a business. As a result, joint investment or the incorporation of shareholders with different fields of expertise has become less necessary and various small enterprises can be totally managed by a sole owner. To illustrate this point, statistics issued by the Thai government show that the majority of enterprises incorporated in the country are small or medium-sized. [1] There are about 200,000 incorporated companies where their majority shares, i.e. more than 50 percent, are held by just one person.[2] Today's business organisations are gradually becoming smaller. It could be said that small enterprises have become more and more significant to the national economy. Therefore, there should be a simplified corporate form that is more appropriate for small enterprises.[3] However, the current Thai law, i.e. the Civil and Commercial Code (CCC), is still inconsistent with this new trend of business. The most significant problem is that at least three shareholders are required to incorporate a private limited company and the process of establishing a company is time-consuming and costly. After the incorporation, there

[1] The Office of Small and Medium Enterprise Promotion (OSMEP), *the Strategy Plan of The Office of Small and Medium Enterprise Promotion no.3 B.E. 2555 – 2559* (2011) Bor-1

[2] Noppadon Pakornnimiddee, *the Advantages and Disadvantages of the Formation of a One-Man Company in Thailand* (School of Law, Sripatum University 2016) 1

[3] Legal and Development Research Institute of Chulalongkorn University, *the Research on Recognition of Single Member Companies, Final Report* (11th September, 2015) 48

are many obligations with which the company must comply under this law. As a result, it is quite difficult for new small enterprises to establish a company.

In fact, single member companies are not a new concept. Many sole proprietors who want to limit their liabilities in order to reduce their risks in operating the business incorporate a company by providing a tiny number of shares for nominees to meet the minimum requirement of the number of shareholders. These nominees are usually people who have a close relationship with the proprietor, such as a wife, parent or child. This means that they must be people the proprietor can truly rely on not to damage him. This kind of enterprise could be called a "single member company de facto", which is deemed to be a legitimate business organisation. The requirement of a minimum number of shareholders has become less significant due to the development of the concept related to company law. Various jurisdictions can find no reason to stipulate the minimum number of shareholders because it tends to obstruct the growth of the business and the economy as a whole.[4]

These problems reflect that it is inappropriate to impose the law on this issue in the current climate. Therefore, various jurisdictions have decided to recognise the concept of single member company or allow sole proprietors of businesses to limit their liabilities in order to reduce the aforementioned difficulties. Thailand is no exception and an attempt is currently being made to legislate a new law to adopt the concept of a single member company in Thai jurisdiction.

The consequence of incorporating companies is that the legal entity of the company will be separated from the sole member. There are several matters to be considered due to the adoption of this concept from a legal perspective. The distinguishing characteristic of this type of company will inevitably affect the legal principles of multi-member companies, such as the limited liabilities of members, the separate legal entity and the separation of the ownership and management of the company.

Based on the hybrid characteristic of single member companies, i.e. while their characteristics are similar to those of sole proprietorships, they consist of a single

[4] Assamen M. Tessema, 'Comparative Single member Companies of Germany, France and England: A Recommendation to Ethiopia' 8 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2193070> accessed 8 February 2017

person and the company's existence totally depends on that person. This sole member has the same advantages as members of multi-member companies, but the company has a separate entity so that the member is able to limit his liability to the extent of his personal funds. This hybrid characteristic is problematic for creditors who engage in business transactions with single member companies because they fear that their rights will be affected. One of the most controversial aspects of single member companies is trust. While the sole members of single member companies enjoy the limitation of liability like members of multi-member companies, creditors have to bear a higher level of risk. Since the company is funded by a sole person, it is exposed to the risk that it may be undercapitalised or unable to access loans from banks or financial institutions for its business activities due to less creditability. As a result, the company may not have sufficient funds to repay its debts in the event of default. Moreover, because it is less formal, a sole person may easily incorporate a single member company in bad faith as a corporate veil for the purpose of evading liability against creditors. A sole member may engage in unfair or illegal conduct without being controlled by other shareholders.[5] Finally, since there is only one member who has the full power to control the company, it is more likely to fail due to the lack of efficient management and expertise. Different from multi-member companies, there are no other shareholders' interests to be considered in single member companies; however, the creditors tend to be the ones who suffer from the consequences of any inappropriate conduct. Thus, it could be said that the special characteristic of a single member company could expose creditors who engage in business transactions with it to a greater risk.

Based on the realisation of this indisputable problem, the focus of this thesis will be the legal issues related to the balance between the benefits of single member companies and creditors' rights and protection for the best mutual interest. Some traditional provisions may be exempted in order to facilitate the management of single member companies due to their unique characteristic, while some specific provisions are required to provide creditors with sufficient protection. The appropriate

[5] ibid 37

creditors' rights and protections are also undeniable to effectively recognise a single member company.

In fact, there are various relevant laws to be considered from the legal aspect; for example, the laws of obligations, contracts, securities, partnerships and companies, corporate insolvency, insurance and tax. The analysis in this thesis will focus on a comparison of the provisions related to company law and corporate insolvency law on creditors' rights and protection under Thai law with the relevant mechanisms in the UK law in order to find a benchmark of creditors' rights and protection in single member companies that is appropriate for adoption in the Thai jurisdiction.

1.2 Hypothesis

There is currently an attempt to recognise the concept of single member companies in the Draft Law on Single Member Companies Act B.E…, which was approved by the Council of Ministers on the 24th January, 2017. However, having considered the regulations under this draft law, it is evident that certain provisions may impose excessively restrictive duties on single member companies which could make them difficult to manage. On the other hand, in view of the hybrid characteristic of these companies; some provisions may indicate less restrictive duties, which could cause creditors' interests to be exploited by a single member company or its sole member. Besides, certain specific rules that exist in UK law could also be adopted into Thai law in order to promote the attractiveness of single member companies.

1.3 Objective

(a) To examine the general concept of a single member company and creditors' rights and protections.

(b) To examine the Draft Law on Single Member Companies Act B.E…, which was approved by the Council of Ministers on the 24th January, 2017

in connection with the rights and protections of creditors in single member companies.

(c) To research the existing UK law in connection with the rights and protection of creditors in single member companies.

(d) To find a benchmark of the rights and protection of creditors in single member companies in order to provide appropriate regulations to support them to encourage the success of this type of business.

1.4 Scope of Study

The purpose of this thesis is to examine the rights and protection of creditors in single member companies under Thai and UK law. In terms of the Thai jurisdiction, since there is currently an attempt to establish specific regulations in respect of companies by the Department of Business Development, Ministry of Commerce, the Draft Law on Single Member Companies B.E… Act which was approved by the Council of Ministers on the 24th January, 2017, it will be examined in this thesis, as well as the Civil and Commercial Code and Bankruptcy Act B.E. 2483. Meanwhile, the Companies Act 2006, the Insolvency Act 1986 and Company Directors Disqualification Act 1986 will be examined from UK jurisdiction.

In terms of the grounds of obligations, although there are several types of creditors, including creditor by contract, tort or unjust enrichment, the differences between them will not be identified in the thesis. Besides, creditors' rights and protection may vary based on the contract between the parties, which distinguishes the level of risk of creditors in engaging in transactions; therefore, these differences will not be addressed here due to the clauses in the contract. However, the main focus of the thesis will be the laws that exist in the aforesaid jurisdictions for the purpose of identifying an appropriate level of legal protection. In fact, there are several fields of law that relate to creditors' rights and protections in single member companies; for example, company law, the law of obligations, security law, insurance law and corporate insolvency law, but the scope of study in this thesis will only include company law and corporate insolvency law.

1.5 Research Methodology

This thesis is based on a comparative approach using primary research from resources such as legal provisions, draft law and cases in both Thai and UK jurisdictions. Reliable secondary resources will also be utilised, such as textbooks, scholars' opinions, articles, journals, websites, news, and government publications in connection with creditors' rights and protection in single member companies in both Thai and English.

1.6 Expected Results

(a) To understand the special characteristic of single member companies and creditors' rights and protections in general.

(b) To understand the current Thai draft law and the necessity of a specific law regarding creditors' rights and protections in single member companies.

(c) To thoroughly understand the UK law regarding creditors' rights and protections, specifically in single member companies.

(d) To provide an appropriate benchmark and recommendation of creditors' rights and protections in single member companies that should be adopted into the Thai jurisdiction.

CHAPTER 2

CREDITORS' RIGHTS AND PROTECTIONS IN SINGLE MEMBER COMPANIES

The general theory of creditors' rights and protections in single member companies will be introduced in this chapter, beginning with the development of the concept of a single member company and the necessity to recognise it in the statutory law. This will be followed by a consideration of the rationale of providing creditors in single member companies with rights and protections. The chapter will end with an examination of the general principles under company and corporate insolvency law, which reflect the concern about creditors' rights and protection.

2.1 Historical Background of Single Member Companies

2.1.1 Development prior to Recognition

Businesses seemed to have a simple and uncomplicated structure in the past, such as sole proprietorships and partnerships. Investment normally came from a sole trader or a few traders, who decided to operate the business together with the aim of sharing the profit. However, the trend of free trade subsequently affected the business model and the concept of a company with a much more complex format was introduced to facilitate the business. Several groups of people and internal organs play different roles in the management of the company under company law, such as shareholders in the general meeting and the board of directors, based on the company law in each jurisdiction. Traders who jointly contribute their funds in order to grow the business are called shareholders, and although there are several shareholders, the business is generally managed by only a few people, such as directors and controlling shareholders. Other shareholders, who can be called "passive investors", do not generally participate in managing the business. They only look forward to the distribution of the dividend. Thus, the concept of limited liability, which is recognised

as one of the most significant principles in the modern corporation law, was introduced to encourage these investors to invest in the business. This concept allows investors to safely invest a limited sum in the company and to enjoy limited liability.[6] In other words, it could be said that these investors will not be held personally liable for the company's debts.

2.1.2 Recognition

Many traders establish a family company in order to obtain the benefit of incorporation of limited companies. Family companies are businesses that consist of a sole majority shareholder, who has absolute control and actually acquires the whole benefit, while family members or companions hold a small number of shares as nominees, solely to meet the minimum number of shareholders required by law. Family businesses have long been recognised as legitimate organisations and it is found from the statistics of many countries, including Thailand, that several small incorporated companies are likely to be family concerns. The reason for incorporating family companies is to combine limited liability with a completely dominant sole proprietorship.[7] These family companies may be called single member companies *de facto*.

The notion of a single member company was initially affirmed by the leading case of *Salomon*,[8] when the House of Lords found no reason to restrict a sole person from incorporating a company as long as it was consistent with the regulatory requirement. This case indicated that the company had a separate legal entity from its owner; therefore, it had its own assets for operating the business and was generally not the agent or trustee of its members. This case allowed the corporate form to be used legitimately to shield the owner of the company from liability when operating the business. The decision recognised the importance of a separate legal entity and the

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[6] Hicks G & S.H. Goo, *Cases and Materials on Company Law* (6th edn 2008, Oxford University Press) 79

[7] Bernard F. Cataldo, 'Limited liability with One-man Companies and Subsidiary Corporation',<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2573&context=lcp> accessed 18 May 2017, 474

[8] *Salomon v Salomon Co Ltd* [1897] AC 22

use of companies, even in relation to small or closely-held companies where the directors are also the controlling shareholders.[9]

The idea of the incorporation of private limited companies changed after the *Salomon* case. One person can legitimately own a company by transferring some of his shares into the names of nominees to make up the required minimum number of members, thus making the company a device for small businesses.[10] In some respects, by extending the benefits of incorporation to small private enterprises, the *Salomon* case induced fraud and the evasion of legal obligations by shareholders, which could lead to injustice and excessive risk for creditors.[11]

The concept of company law has gradually become controversial in terms of the minimum required number of shareholders due to the trend of establishing family companies. This rule regarding the minimum number of shareholders has been opposed by several legal scholars and courts in many jurisdictions, since they find that the imposition of this criterion is unnecessary. It is questionable why shareholders in multi-member companies are able to limit their liabilities, while this advantage is withheld from sole traders. Due to the recession of the idea regarding the minimum number of shareholders in company law, the concept of single member companies has been explicitly recognised in the statutory law of various jurisdictions to reflect the actual circumstances in modern company law.[12]

Single member companies have been explicitly recognised in the EU since 1989 pursuant to the Twelfth Council Company Law Directive of the 21st December 1989 on Single member Private Limited Liability Company (89/667/EEC). This concept has been accepted and agreed by some European countries, including Belgium, Denmark, France, Germany, The Netherlands and Luxemburg and has been

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[9] Ducan MacKenzie, 'Abusing the corporate form: Limited liability, Phoenix Companies, and a Misguided Response' (2008) The University of Otago <http://www.otago.ac.nz/law/research/ journals/otago036279.pdf> 10

[10] Hicks G & S.H. Goo, *Cases and Materials on Company Law* (6th edn 2008, Oxford University Press) 79

[11] Gonzalo Villalta Puig, 'A Two-Edged Sword: Salomon and the Separate Legal Entity Doctrine' Volume 7, Number 3 (September 2000) Murdoch University < http://www.austlii.edu.au/au/journals/MurUEJL/2000/32.html> accessed 18 May 2017, 1

[12] Jirajit Chouysriyoung, *Single member Private Limited Company* (Thesis for Degree of Master of Laws Program in Laws, Chulalongkorn University 2005) 1 - 2

effective as domestic law since 1993.[13] Besides, the European Communities (Single member private limited companies) Regulations 1994 provided certain rules regarding this concept.[14]

This concept has been recognised in France since 1985 where it is known as *Entreprise unipersonnelle à responsabilité limitée* ("EURL"). It was created in order to resolve the practical problem of the formality of company incorporation, which requires at least two shareholders. Subsequently, several types of legal entities that could be incorporated by a sole owner were recognised under French law, such as *Sociéta par action simplifiée unipersonnelle* ("SASU"), *Auto-entrepreneur* and *Entrepreneur individual à responsabilité limitée* ("EIRL").

A single member company in Germany is called an *Einmanngesellschaft*, and it was recognised by the legal reformation in 1980.[15]

In the UK, single member companies have been recognised since 1896 by virtue of the *Salomo*n case, and later by the resolution of the House of Parliament in The Companies (Single member Private Limited Companies) Regulations, 1992. Company law was reformed in the Companies Act 2006, in which single member companies were explicitly recognised.[16]

In terms of the US, there have been business organisations called limited liability companies ("LLC") since 1977, which allow investors to limit their liability to not exceed their investment. These organisations are hybrids somewhere between limited partnerships and corporations. Members of limited liability companies participate more in the management of the business than shareholders in corporations, who have no control over the day-to-day business operation. Limited liability companies have been able to have a sole member since 1996 and be called a single member limited liability company ("SMLLC"). It was initially recognised by the tax authority for the purpose of collecting taxes. Delaware was the first State to recognise the establishment of single member limited liability companies. Then, other States like Florida, California and Massachusetts also recognised this concept in 1982, 2000

[13] ibid 83-84
[14] ibid 92
[15] ibid 114
[16] ibid 101

and 2003, respectively. Since then, all the other States have come to recognise the registration of single member limited liability companies.[17]

2.2 Characteristics of Single Member Companies

A single member company ("SMC") is a type of corporate body that has been adopted by various jurisdictions in different names, such as a one-man company, a one-person company, a single member limited liability corporation ("SMLLC") and *societas unius personae* ("SUP").

Under the law of each jurisdiction, single member companies are classed as either private or public companies, which are initially incorporated by one person or the number of members is subsequently reduced to one person.[18] A natural person or corporate body is entitled to establish a single member company and the most distinctive characteristic of this type of company is that all the shares or contribution must have been subscribed by a sole person. The number of members of the company should be limited to a single person.[19] As a result, the owner or founder is the sole member of the company who wholly owns the profit from the company and is also liable for any losses.

Single member companies have a hybrid characteristic. Similar to sole proprietorships, they consist of a sole person on whom the stability of the company totally relies; however, the said sole member has the same advantages as members of a multi-member company based on being a separate entity apart from the company. Thus, owners of single member companies are able to limit their liability to the extent of their own funds like members of multi-member companies.

There are some significant consequences of this unique characteristic. Firstly, there is no need to hold a shareholders' meeting, which is an organ consisting of shareholders with the authority to make decisions in the company. Shareholders can generally protect their interests by exercising their right to control the board of

[17] ibid 71-73
[18] <https://www.cro.ie/registration/company> accessed 14 September 2016
[19] Securities and Exchange Commission of Pakistan, 'Guide on Single Member Company', 3

directors. Different from multi-member companies, since a single member company only has one member, there is no need to hold a meeting because it is solely and absolutely controlled by that member.[20]

Secondly, the sole member of a single member company has both the decision-making power and the executive power. Single member companies lack the function of a board of directors, which is generally to supervise the directors and employees in the operation of the day-to-day business and protect creditors who engage in transactions in certain circumstances stipulated by the law. Unfortunately, it is difficult for the board of directors of single member companies to be independent because the sole member tends to hold the office of director or have absolute control over them. As a result, the sole member may ignore the interests of the company or creditors and damage them by only focusing on his own. Therefore, it is difficult to for a single member company to achieve the role of the board of directors and consider other parties' interest.[21] There are no complex checks and balances by the shareholders themselves or other internal institutions such a shareholders' meeting. This raises the question of how to control single member companies by improving their governance structure.[22] On the one hand, this unique characteristic gives the single member absolute control in the management of the company; on the other hand, it unavoidably affects the rights of the other parties who engage in business activities with a single member company, namely the creditors, who may be business partners, employees or clients.

2.3 Benefits of Single member Companies

Although establishing a single member company entails complying with some legal formalities, which seems to be more complex than operating as a sole

[20] Bai Xiaojun and Su Zhenhong, 'Corporate Governance for One-man Company in View of the Theory of Stakeholders', School of Economics and Management, Shenyang Ligong University <http://www.seiofbluemountain.com/upload/product/201002/1265779897wzf1roe9.pdf> 218
[21] ibid 218
[22] ibid 217

trader, [23] there are still numerous reasons to incorporate this kind of company. The recognition of single member companies will lead to several advantages for all relevant persons as illustrated below.

From a trader's perspective, a single member company is an alternative for sole traders who are reluctant to jointly invest with other traders to establish their own business.[24] Firstly, since there is no need to appoint nominees to hold shares for them, there is unlikely to be a conflict of interest or a problem with trust among shareholders. There will be no conflict in the management of the business because the sole member has absolute control. He can make all business decisions independently and receive the full share of the profit.

Secondly, the sole member will need to devote considerably less time, energy and resources to the business due to the simpler regime of single member companies. From an economic perspective, based on the theory of absolute advantage by Adam Smith, in the event that single member companies can generate products or services equal to those of multi-member companies while spending less on administrative costs; this implies that single member companies are more effective business organisations than multi-member firms.[25] As a result, they are deemed to be more advantageous to the sole member. Besides, single member companies may obtain certain benefits such as tax incentives and be exempted from certain formalities by the government.[26]

Thirdly, single member companies are deemed to be a device to protect personal assets due to the principle of separate legal entity. Sole members are able to limit their personal liability, which encourages them to invest more in the business in the knowledge that they will not be personally liable for the company's debt. Sole members will be able to diversify their investment in several companies in order to reduce their risk and liquidate a particular business quickly if it has no prospect of

[23] Hicks (n 10) 93
[24] Legal and Development Research Institute of Chulalongkorn University, *the Research on Recognition of Single Member Companies, Final Report* (11 September 2015) 27
[25] Noppadon Pakornnimiddee, *the Advantages and Disadvantages of the Formation of a One-Man Company in Thailand* (School of Law, Sripatum University 2016) 20
[26] Hicks (n 10) 94

generating a profit. Although, in reality, sole members may be requested to provide security at the time of concluding the contract, such as a charge on property or a personal guarantee that causes shareholders to bear unlimited liability, the principle of limited liability still protects shareholders on some level from certain groups of creditors and the unpredictable obligations of the company, such as tortious liability.

Fourthly, from the opposite perspective, since single member companies have a separate legal entity, their assets are shielded from the claims of the personal creditors of members. They are protected from the financial difficulties of the owner. This characteristic is advantageous for both the company and its creditors, since it reduces the risk of engaging in business with the company and, as such, promotes the efficiency of its commercial transactions.[27]

Finally, single member companies are more trustworthy than sole proprietorships because they are required to comply with several regulations and disclose important information to the public. The relevant persons will be able to access this information before deciding to engage in a business transaction with a single member company. A single member company also has perpetual succession; therefore, the management of the business seems to be more consistent. It can only be liquidated on grounds specified by the law. In addition, the company can protect its business name better than natural persons because after it has been registered, other people are prohibited from incorporating a company with the same name. As a result, people will be more interested in engaging in business transactions with single member companies; therefore, these companies will be able to make more profit.[28]

From the public's perspective, single member companies are currently recognised and accepted as a business model and the recognition of this concept will appropriately reflect the current trend of business. Firstly, the government will be able to effectively govern and monitor these enterprises, which will encourage them to be transparent so that they will pay the correct amount of tax. At the same time, the government will be able to encourage economic growth by providing single member companies with some exclusive benefits.

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[27] Susan McLaughlin, *Unlocking Company Law* (3rd edn 2015, Routledge) 52
[28] Legal and Development Research Institute of Chulalongkorn University (n 24) 29

Secondly, the convenience of establishing a single member company will induce individuals to initiate new businesses, which will increase the opportunities for employment and encourage economic growth as a whole.

2.4 Rationale of the Creditors' Rights and Protections in Single Member Companies

2.4.1 General Creditors' Rights and Protections

2.4.1.1 Historical Background

The development of creditor protection firstly appeared in the *Centros* case[29], when a Danish couple decided to incorporate a business in Denmark but register it in the UK in order to avoid the minimum capital requirement under Danish law. After the incorporation, the Danish authorities refused to recognise their sole place of business in Denmark as a branch office of the English company. Therefore, the couple appealed to the European Court of Justice. Pursuant to the principle of freedom of establishment in the EC Treaty, the Court accepted the couple's argument that the company had been duly formed under UK law, regardless of the fact that its business was conducted exclusively conducts in Denmark. This decision focused on the significance of the place of establishment of a company, which is called the 'incorporation theory', rather than the actual place where the business is conducted, which is the 'real seat theory'.[30]

The issue that was relevant to creditors' rights and protection was that the real seat theory aims to preserve the policy instrument of the national company law in certain areas like creditor protection.[31] However, based on this decision, each state was restricted from imposing regulations regarding the freedom of establishment for the purpose of protecting creditors or preventing fraud where there is an alternative way to protect creditors. This had the effect of reducing the States'

[29] *Centros Ltd v Erhvervs- og Selskabsstyrelsen* [1999] ECR I-1459; Thomas Bachner, *Creditor Protection in Private Companies: Anglo-German Perspectives for a European Legal Discourse* (first published 2009, Cambridge University Press)
[30] Bachner (n 29) 1-2
[31] ibid 3

power in connection with the legislation in order to protect the interests of certain groups of companies, which consequently led to the issue of creditor protection in company law.[32]

2.4.1.2 Underlying Rationale

The stakeholder theory will firstly be examined in order to understand the significance of considering the interests of the company's creditors. Based on the stakeholder theory, which concerns the organisation's management and business ethics, there are several categories of stakeholders who are directly or indirectly affected by the company's conduct. R. Edward Freeman; *"stakeholders are people able to influence the realisation of the objectives of an organisation or are people affected by the organisation to achieve the goals."* In other words, *"stakeholders are individuals or groups who benefit from or are harmed by, and whose rights are violated or respected by corporate action."*[33]

Stakeholders can be categorised as those who have internal claims; for example, shareholders and employees, which includes executive officers, managers and external claimants; namely, lenders, customers, suppliers, society, government and competitors. [34] The board of directors only owes fiduciary duty to shareholders who are viewed as the owners of the company; however, this will only generate short-term profit and will inevitably make other stakeholders lack the confidence to engage in any business with the company.[35] In the modern corporate world, companies are not only vehicles for their shareholders, but the benefits of other relevant stakeholders should also be considered. All stakeholders who are involves with the company's performance should be treated equally. Shareholders should not have supremacy in controlling the company because they are not the only risk bearers; instead, there are other stakeholders who also share the risk.[36]

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[32] ibid 4

[33] R. Edward Freeman, 'Stakeholder Theory of the Modern Corporation', < https://businessethics. qwriting.qc.cuny.edu/files/2012/01/Freeman.pdf> accessed by 18 May 2017, 41

[34]Interests of Stakeholders < https://www.lawteacher.net/free-law-essays/business-law/interests-of-stakeholders.php> accessed 18 May 2017

[35] ibid

[36] ibid

Creditors are one of the most significant categories of stakeholders. They can be several groups of persons who have a legal claim on the company. The relationship between a company and its creditors, such as lenders, suppliers and consumers, may be based on various contractual obligations or even a tortious obligation such as tort victim. For example, lenders who invest in the company by providing a loan expect to be repaid with interest. Lenders take a risk in unpredictable situations such as the default of the repayment of the debt or insolvency, when the company has inadequate remaining resources to repay the debt. Creditors are generally inevitably affected by the company's conduct, as explained below.

Firstly, from the property rights perspective, a company not only consists of shareholders' investment, but also creditors' contribution, such as loans and labour. When both shareholders and creditors contribute a fixed amount, there is no reason to neglect the other creditors' interests.[37]

Secondly, in terms of exposure to risk, it is not only the shareholders who bear the risk; other creditors also take a risk, which seems to be more difficult to transfer. Shareholders can decentralise their risk through the principle of limited liability, diversify their investment in various businesses. They are also able to trade their shares conveniently and quickly because they only have limited liability and the remainder of the risk is transferred to the creditors, who will find it difficult to escape damage in a critical situation.[38] Therefore, companies should consider the interests of all their creditors, not just those of their shareholders. Stakeholders should play a role in corporate governance and be able to protect their interests based on the number of their assets and the level of risk they bear.[39]

Thirdly, when a company becomes insolvent or has financial difficulties, the order of repayment will generally be secured creditors, unsecured creditors and shareholders, respectively. Shareholders will have the least chance of being repaid, since they are at the end of the line. However, due to the benefit of

[37] Bai (n 20) 219
[38] ibid
[39] ibid

limited liability, they will not be obliged to make good any financial losses. [40] Even more, they may decide to engage in hazardous activities that have little chance of making a huge amount of profit or have a high chance of making a los. Alternatively, shareholders as investors will promptly sell their shares in order to avoid the los. Shareholders will not wait for long-term benefits and will not be responsible for recovering the business; instead, it is other stakeholders who are negatively affected when the company is at risk.[41]

Fourthly, although creditors are able to ask for security from the controllers of the company, such as a mortgage or personal guarantee which will override the limited liability of shareholders, a contract does not fully protect creditors, especially small ones who were not involved in drafting the contract and have little bargaining power or involuntary creditors, who are not willing to be legally bound to the company. [42] Furthermore, some creditors may not be able to access certain crucial data that would affect their decision to become bound to the company due to asymmetric information.

There are some ideas of corporate governance based on the stakeholder theory that include the relationship between a company's management, its board, its shareholders and other stakeholders; for example, allowing certain categories of stakeholders to participate in the corporate governance in order for the company to make a long-term profit.[43] Nevertheless, several regulations have been developed for large companies, they are inappropriate for application to single member companies that are managed and owned by an individual with a smaller scope than that of large companies. Therefore, it is necessary for the regulations imposed on single member companies to be simplified and this is discussed below.[44]

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[40] Ferran Eilis, *Principles of Corporate Finance Law* (first published 2008, Oxford University Press) 19
[41] BAI (n 20) 219
[42] Interests of Stakeholders (n 33)
[43] BAI (n 20) 220
[44] Susan McLaughlin, *Unlocking Company Law* (3rd edn 2015, Routledge) 6-7

2.4.2 Effect of Single member Company Debtors

Having demonstrated the necessity to recognise the concept of single member companies and provided the general rationale to consider the interests of the creditors, the focus of this part of the paper will be the effect of the incorporation of single member companies on creditors

2.4.2.1 Underlying Rationale

The most extreme, yet common, situation in which the interests of creditors are affected is when the debtor is a single member company.[45] Although there are several persuasive reasons for establishing a single member company, there are also some drawbacks due to its unique characteristic of a sole member, which needs to be carefully considered. It could be said that single member companies have the same problems as family corporations, which inevitably expose creditors' to risk.

The first problem relates to corporate governance in the company, since traditionally, the important characteristic of company law is the separation of the ownership and management of the business. Shareholders who contribute funds should only exercise their power to control the management of the business through a shareholders' general meeting. Directors who are deemed to represent the company should be authorised to make general business decisions in the form of centralised management. Several organs play a role in managing and monitoring the activity in order to balance the interests of particular groups of shareholders.[46] The shareholders' general meeting and the board of directors have the duty to check and balance each other; as a result, no individuals can dominate the decision making. However, in single member companies, the sole member tends to hold the office of director, or even if another person is appointed to be a director, he or she will eventually be subjected to the sole member's control because sole members are the only persons who are entitled to appoint or remove directors. It could be said that the sole member of a single member company has absolute control over any conduct of the company,

[45] Bachner (n 29) 21
[46] Hicks (n 10) 319-320

and as a result, the traditional corporate governance that aims to be imposed on large companies becomes ineffective.[47]

Secondly, there is a concern that the incorporation of single member companies could cause the abuse of the corporate form. There is more potential for misuse based on it being less formal, controlled by law and less costly to establish. Single member companies are a type of corporate vehicle that can be easily established and controlled by one person. Some of these people may dishonestly establish a single member company as an alter ego to undertake unfair or illegal activities, such as defrauding creditors or evading debt. These sole members may distort the principle of limited liability, which affects the amount creditors can claim. The companies may be either initially established to defraud creditors or subsequently incur further debt which is unable to be repaid in the event that the business fails.[48] Although fraud can also be perpetrated by multi-member companies, the lack of balance of power makes it easier for sole members to commit fraud for their personal benefit; for instance, when a single member company is facing financial problems, as the only person who controls it, the sole member may immediately transfer the company's property to escape liability.

2.4.2.2 Examples of Risk

Having identified the causes of risk to creditors in a single member company, examples of situations in which creditors' rights and protections are ignored due to the characteristic of single member companies will be provided below.

The first example is when members decide to start a new business that directly competes with the single member company's business or they exploit any benefit of the single member company for their own interests, which causes damage to the single member company. In multi-member companies, other shareholders can control or claim against such misconduct in the company's interests. However, since there is no such internal control by shareholders in a single member company, the sole

[47] Legal and Development Research Institute of Chulalongkorn University (n 24) 34-36

[48] Wuthiphong Wongsrikeaw, *Liabilities of Managing Director in Case of the Bankruptcy of Company* (Faculty of Law, Thammasat University 2006) 3

member is able to exploit the company's interests, which will ultimately increase the creditors' exposure to risk.

The second example is when directors enter into a contract with the company themselves. There is more potential for a conflict of interests in the event that the members enter into a contract with a single member company, since they may not realise the separate legal entity, assets and liabilities between the company and its members, which will eventually affect the creditors.[49] A director of single member company may enter into a contract with himself in order to purchase goods, hire people for a job, borrow money or bind the single member company with some legal obligations. The said contract may not be conducted in the ordinary course of business or take advantage of the single member company by costing more than it should or being unprofitable. The consequence of this contract will indirectly transfer the wealth from the single member company to the director, which will ultimately affect the position of its creditors. In the worst case, if the single member company eventually becomes insolvent, all its creditors will have to share the distribution with the said director, who may also be a preferential creditor of the company.

The third example is based on the fact that the directors could dishonestly approve a remuneration for themselves or even approve the distribution of dividend for themselves as members. This conduct also reduces the total assets of the company, which ultimately has the same effect on the creditors.

The fourth example concerns inaccurate and false statements or false minutes of meetings, accounts, annual reports or other statements that a director may make in the absence of controls, checks and balances by other organs. Creditors who rely on financial stability and perceive these inaccurate or false statements, may decide to engage in business with a single member company. Those who are not aware of them may not adequately negotiate the appropriate terms in the contract, thereby taking a greater risk than they expected.

The fifth example concerns the difficulty of distinguishing a single member company from personal assets.[50] Theoretically, once a single member

[49] Legal and Development Research Institute of Chulalongkorn University, (n 24) 133
[50] Noppadon Pakornnimiddee, *the Advantages and Disadvantages of the Formation of a One-Man Company in Thailand* (School of Law, Sripatum University 2016) 50

company is a separate legal entity from its member, the assets between these two entities must also be separated. However, due to the fact that the total investment in a single member company is from the sole member and any income belongs to that person, it will be impossible to distinguish if they belong to the legal entity of the sole member or the company. Sole members may intentionally or negligently use the assets of the single member company for their own interests so that the total amount of the company's assets will be depreciated or devalued and eventually, this will affect the amount of assets claimable by creditors.

The sixth example entails the difficulty in distinguishing the party to the contract. Although a single member company and the member have separate entities, the company is represented by the same person. This may cause another party to enter into a contract with a person he would not have engaged with had he known this fact.

The seventh example refers to the consistency of a single member company. Although these companies are considered to be corporate bodies, the internal management is still based on the sole person. Some circumstances of sole members, such as death, bankruptcy or incapability, will inevitably lead to the business being terminated. Besides, the business could be subjected to a takeover, which would cause a change in the management and this would ultimately affect the parties engaged in transactions with the company, like creditors.[51]

The eighth example is that a single member company may be established as a corporate vehicle to evade the legal obligation of a failing company. This is called the "phoenix syndrome" and it usually occurs in closely-held companies like single member companies. This is a situation in which a company has been reborn soon after or before its failure. The phoenix company usually takes on the failed company's business, often uses a similar name or the same managers and assets.[52] However, the creditors of the failing company will have no legal claim on the

[51] Interests of Stakeholders (n 33)

[52] Duncan Mackenzie 'Abusing the corporate form: Limited liability, Phoenix Companies, and a Misguided Response' (2008) The University of Otago <http://www.otago.ac.nz/law/research/journals/otago036279.pdf> accessed 18 May 2017, 19

new one. They will be put into the insolvent liquidation.[53] This usually occurs when the failing company has several obligations that inevitably lead to insolvency liquidation. It can be said that the shareholders use the principle of limited liability to escape from the failing company's debt because they have no duty to contribute additional capital to it to meet its obligation to its creditors.[54]

As can be seen from the above examples of risk, if a single member company is recognised in a jurisdiction, it is a challenge for the appropriation of the traditional corporate governance rule. [55] The extent to which the creditors of a single member company should be protected from the said risk is a controversial issue. The law should play a role in facilitating enterprises while regulating them in the mutual interests of members and creditors.[56] The law should consider either a preventive approach to protect creditors, such as imposing directors' duty, a public registry system and capital rule or a compensatory approach, such as fraudulent and wrongful trading, which will be analysed in the next chapter.

2.5 Relevant Principles of Law

2.5.1 Separate Legal Entity

A legal entity refers to the legal status of one regarded by the law as a person.[57] There are two types of persons in every jurisdiction, namely, natural and juristic. Different from a natural person, a corporate body is a kind of artificial or juridical person (*persona ficta*) whose entity is regarded by the law to have the status of personhood. There are several theories related to the legal personality of a juridical person, namely, the fiction theory, concession theory, realistic or organic theory, contractual or nexus of contract theory, enterprise theory, aggregate theory,

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[53] ibid 19
[54] ibid 27
[55] Rui Li, Brief Analysis of One-man Company Credit Legal System (2010) School of Humanities and Laws, Tianjin Polytechnic University <http://file.scirp.org/ pdf/20-1.56.pdf > accessed 18 May 2017, 194
[56] Hicks (n 10) 92
[57] PERSONALITY, Black's Law Dictionary (10th ed. 2014)

collectivist theory and purpose theory.[58] In short, although these theories consider a juristic person from different perspectives, they are all based on the same thought of recognising a juristic person separately from the natural person who incorporated it. The recognition of a juristic person as a distinctive legal person is the crucial foundation of the law. From a legal perspective, the activities of a juristic person generate the same legal consequences as those of a natural person. A juristic person possesses the legal rights and liabilities that are analogous to the legal behaviour, rights and obligations of individuals.[59]

The company will have a separate legal personality after it has been duly incorporated in compliance with the law. Consequently, it will have its own rights and obligations from both contractual and tortious perspectives; for example, to own property, to conduct business activities, such as entering into contracts and incurring debt, to commit both tort and crime, to be sued by other persons, to claim compensation from other persons, to be subjected to certain legal obligations, such as payment of taxes, and to be perpetual succession.

One of the important consequences is that the ownership and management of the company will be separated from the member. Companies generally consist of two organs, the first of which are the members who are deemed to be the owners of the company because they have the duty to pay for subscribed shares and are subsequently entitled to acquire dividends from the company. However, they may only exercise their power on certain important issues in a general meeting or other approaches stipulated by the law. The other organ of the company consists of the directors. Since a company is a juristic person but cannot express its intention itself, its intention must be declared by an authorised representative. Directors generally have the duty to manage the day-to-day business. By separating the management and ownership, members are able to invest in a company by purchasing shares without being involved in the management of the business. A skilful director may be hired by a company for efficient management.

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[58] Jirajit Chouysriyoung, *Single member Private Limited Company* (Thesis for Degree of Master of Laws Program in Laws, Chulalongkorn University 2005) 26-30

[59] Baxt, R (Robert), *Afterman and Baxt's cases and materials on corporations and associations*, 8th edn, Butterworths, 1999, 178

Since single member companies are duly incorporated under company law, they will have a separate legal entity apart from their member like other types of corporate bodies. As a consequence, sole members have to comply with some duties. The first is the duty to incorporate properly whereby sole members are required to comply with the requirements of incorporation, such as submitting a Memorandum or Article of Association upon the registration of the company. Besides, although it is not easy to determine a sufficient amount of capital, another duty of the sole member is to invest an adequate amount of capital to prevent the court from disregarding the corporate entity. The second duty is to respect the manner of the business. This duty includes maintaining the company's assets separately from the sole member's personal assets and also the duty to have an accurate set of accounts examined by the authorities or disclosed to the public, as stipulated by the law. However, due to the characteristic of single member companies, the sole member may easily fail to comply with these duties; for instance, by utilising the corporation as an "alter ego" to conduct dishonest activities for the purpose of evading his existing obligations, which is regarded as defrauding creditors. [60]

Despite the strength of the principle of separate legal personality, there is an exception to this concept in special situations where the courts have recognised the substance rather than the form, which is called "the disregard of a corporate entity", "lifting the corporate veil" or "piercing the corporate veil". This is a kind of civil liability imposed on members who incorporate a corporate veil in bad faith. The Judge will ignore the corporation's legal personality and impose liability on the individual. The company and its member may be treated as if they were the same entity by considering the realities of life, the economic requirement and the power of the facts.[61] The manner of operation of the business will be taken into account when determining whether to pierce the corporate veil. The existing cases vary, depending on court's discretion, but they typically involve a situation where companies have insufficient assets to compensate for their liabilities, such as undercapitalised

[60] Assamen M. Tessema, 'Comparative Single member Companies of Germany, France and England: A Recommendation to Ethiopia' 13-14 <https://papers.ssrn.com /sol3/papers.cfm?abstract_id=2193070> accessed 8 February 2017
[61] ibid 15

companies, no independent economic existence, or where the company is being used by the individual who controls the company to escape some legal obligation or defraud third persons like creditors. It may be implied that, due to the unique nature of single member companies, i.e. having a sole member, court is likely to pierce the corporate veil when the sole member is found to have established the company with bad intentions. Besides, there are also exceptions to the separate legal personalities under tax law; for instance, the law may stipulate that the income of a subsidiary should be treated as that of the holding company or to require group companies to produce consolidated accounts.[62]

2.5.2 Limited Liability

Before the recognition of the limited liability doctrine, businessman sought to minimise their risk using several approaches, namely, to share risk between partners, obtain a loan and offer creditors a high return in the event that the business makes a profit or not to compensate them if the company suffers a loss, and insure against risk in case of los. Limited liability, which is the keystone of the capitalist system, is recognised as the greatest discovery in the modern world.[63] It is also deemed to be the most significant consequence of the separation of legal personality. Shareholders will acquire all the benefit from business activities without having to bear the costs, which are borne by creditors.

The assets of the company will be separated from member' assets after the incorporation and members will not be responsible for the company's debt that exceeds the price of the subscribed shares. The assets, debts and obligations all belong to the company, not to the members personally. The company must be liable for its own debt and shareholders' personal assets will not be enforced. The company's funds must not be intermingled with members' personal assets. Therefore, a clear account is needed to separate the assets of each entity. While the company has unlimited liability for debts and obligations, the members' liability is limited to the

[62] Hicks (n 10) 104
[63] ibid 100

amount of their investment.[64] This implies that members are entitled to make a decision related to the growth of the company, but their liability is limited to the amount of their investment, even if the company subsequently becomes insolvent and has remaining unpaid debts.

Limited liability operates as a shield to protect shareholders from being forced to make a contribution over the fixed amount of their investment. This means that the creditors' right will be limited to the assets of the company. They cannot enforce the repayment from shareholders' personal assets. There are a number of positive consequences for shareholders; for instance, limited liability promotes entrepreneurial activity. It attracts more passive investors who do not want to take part in the management of the company. Besides, it allows shareholders to diversify their portfolios because they are able to estimate the level of risk and prospective profit from each business before making an investment. Lastly, limited liability reduces the shareholders' incentive to monitor the business, since they have less at stake if the company becomes insolvent.[65] Therefore, this minimises the cost of investment because shareholders can foresee their limited loss so that it is unnecessary to monitor the management of business.[66] It is obvious that the principle of limited liability is advantageous for large companies with many shareholders who are only interested in dividends rather than in closely participating in the management of the company.[67]

However, limited liability companies tend to have the adverse effect of transferring uncompensated trading risk to creditors because they will not be able to directly claim shareholders' personal assets in the event of default.[68] Moreover, limited liability may sometimes encourage the controllers of the company to take excessive risk because they can limit their own risk and shift the risk to creditors. Nevertheless, creditors' rights may not limited by this principle in practice, because some creditors who have bargaining power may request the company or controllers for an additional agreement, for instance, a personal guarantee, securities, negative

[64] Baxt, R (Robert), (n 59) 189
[65] Mackenzie (n 52) 13
[66] Ferran (n 40) 21-23
[67] Legal and Development Research Institute of Chulalongkorn University (n 24) 32
[68] Hicks (n 10) 101

pledge, maintenance of financial status and disclosure of up-to-date information, in order to protect themselves from los.[69]

From the restrictive view of Adam Smith, limited liability corporations should only be justified if the capital required is so great that a private venture could not provide it, such as insurance, water supply, banking and canal construction. This implies that sole proprietors should not be able to limit their liability in their business from this perspective. Besides, the original purpose of limited liability was not for a sole trader to incorporate a single member company because there was a concern that it would distort the limited liability principle in the event that the shareholder had controlling power and engage in opportunistic behaviour to defraud the creditors.[70]

It was not until the *Salomon* case that it was confirmed that limited liability companies may be used for other purposes. They may also be used as a business vehicle for shareholders or even sole traders who take the full benefit of limited liability. Furthermore, the law began to favour private companies in 1900 by exempting them from some publicity requirements and the court also refused to protect creditors, which should have been the consequence of the privilege of limited liability.[71]

Nevertheless, the advantages of limited liability tend to fall away in small companies. Since the shareholders and directors are commonly the same people, the shareholders are in a position to acknowledge the conduct of the company; thus, it is no longer necessary to monitor the business. As a consequence, the shareholders may not need to limit their liability for unexpected business activities. Secondly, limited liability would not encourage much investment since the shares are not freely transferable as they are not publicly traded. Lastly, the diversification of risk may not be possible in small companies because controlling shareholders or directors will eventually be requested to provide a personal guarantee to engage in a business transaction with another party, thereby putting their entire wealth at risk anyway.[72] Still, limited liability is justifiable for small companies because it is not a strict default

[69] Legal and Development Research Institute of Chulalongkorn University (n 24) 33
[70] Hicks (n 10) 96
[71] Hicks (n 10) 101-102
[72] Mackenzie (n 52) 15

rule, as mentioned above. Some creditors such as lenders are entitled to adjust the interest rate or request a guarantee based on the level of risk they perceive. Also, trade creditors are able to set a price that reflects a relatively predictable level of bad debt.[73] Notwithstanding, the abuse of the concept of limited liability becomes most apparent in closely-held or small companies. Although voluntary creditors are able to adjust the terms of their credit, they no longer have the ability to adjust the repayment commensurate with the risk after the contract is concluded. The company may engage in irrational and risky activities that will inevitably increase the risk to the creditors. Furthermore, in the stage of insolvency, the company may undertake risky investment which offers a small possibility to prevent insolvency, which is called moral hazard.[74] Therefore, the limited liability principle shifts the risk from the unsuccessful company to the creditors. The shareholders and managers will have an enormous incentive to take a risk while the creditors are the ones who bear it.[75] Even though a sole member of a single member company may be allowed to use a corporate vehicle as a shield to limit his liability, but it must not be used as a weapon of fraud.[76] Therefore, the appropriate regulation is necessary for the purpose of preventing the aforesaid situation.

2.5.3 Directors' Duties

As representatives of a company, directors should exercise their powers within the authorised scope and they should have civil or criminal liability for failure to comply with their duties. Directors should generally be liable against the company and the shareholders. They should have fiduciary duties in the management of the company, such as not acting in competition with the company, not engaging in opportunistic behaviour, not having interests that conflict with those of the company, and not engaging in insider trading. Besides, directors have a duty of care and they

[73] Mackenzie (n 52) 16
[74] Mackenzie (n 52) 18
[75] Noppadon Pakornnimiddee, *the Advantages and Disadvantages of the Formation of a One-Man Company in Thailand* (School of Law, Sripatum University 2016) 23
[76] Baxt, R (Robert), (n 59) 193-194

should carefully manage the company's business with full knowledge and competence.[77]

Moreover, directors shall have the duty to creditors in certain special circumstances under the law of each jurisdiction. To illustrate this point, when a company faces financial difficulty, the directors will have the duty of accounting; for instance, preparing and keeping the appropriate financial documents. Another duty is to determine whether they should continue operating the business or close it down and prepare an appropriate strategic plan.[78]

2.5.4 Capital Maintenance

From the corporate perspective, capital funding is the money creditors and shareholders provide to the business in the expectation of earning a return on their investment in the form of interest, dividend or an increase in the value of their shares . In fact, the word, "capital" can have several meanings. Based on company law, the word "Capital" or "Legal Capital" strictly refers to money or assets invested, or money that is available for investment in a business.[79] It is the total amount of the original investment shown in the company's accounts and it will remain unchanged even though it has been exhausted. In other words, it is measured in terms of the valued received into the company, rather than the current value of the assets. The legal capital of a solvent company is likely to be lower than the total amount of the company's assets because, in reality, the total amount of funds available for a project consists of both debt funding from creditors and equity funding from shareholders.[80]

Capital maintenance refers to the retention of shareholders' investment within the company to finance the company's business. In other words, when a company receives share capital, it does not return it to the shareholders until the

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[77] Wuthiphong Wongsrikeaw, *Liabilities of Managing Director in Case of the Bankruptcy of Company* (Faculty of Law, Thammasat University 2006) 20-22
[78] ibid 25-26
[79] CAPITAL, Black's Law Dictionary (10th ed. 2014)
[80] Len Sealy & Sarah Worthington, *Cases and Materials in Company Law* (9th edn 2010, Oxford University Press) 456

company has been wound up.[81] This rule attempts to preserve the shareholders' contribution to the company in order to ascertain that the stated level of capital is maintained by restricting the company from freely returning assets to its shareholders. This mechanism is regarded as a statutory collective creditor term, viz. it sets the minimum standard to protect all creditors' rights. Since transactions are evaluated on the basis of the level of net assets at the time of entering into the agreement, the subsequent distribution of capital will definitely reduce the expected value of the claim. This mechanism attempts to mitigate the risk that shareholders will subsequently withdraw their contributions.

The underlying reason for the rules to maintain companies' capital is that creditors will still be restricted to the scale of return indicated by their agreement, while shareholders will receive a dividend and expect the value of their shares to increase due to the profit generated from the success of the business.[82] Since shareholders have a limited liability not exceeding their investment in the company. viz. even if the company fails and incurs a huge amount of debt, shareholders will only be liable to the extent of the unpaid share price or will even have no liability if they had already paid the full price. Conversely, creditors will be increasingly exposed to the risk so that eventually they will not acquire the repayment of the debt. The regulations related to shareholders' capital contributions could play a role to mitigate this risk.[83] It could be said that the benefits of limited liability to shareholders are counterbalanced by the provisions regarding creditors' interest, like the maintenance of the capital rules. These rules provide preventive protection, since they have the same effect as a standard covenant for all creditors who may be weaker or unable to negotiate and it also avoids the cost involved in the negotiation.[84]

Since single member companies consist of a sole member, the whole equity funding or investment is from that member. Certain capital rules may be disregarded due to this special characteristic. Therefore, the rules that still apply or no longer apply to single member companies need to be clarified in order to specify the

[81] MAINTENANCE OF CAPITAL, Black's Law Dictionary (10th ed. 2014)
[82] Sealy (n 80) 457
[83] Sealy (n 80) 458
[84] Ferran (n 40) 179, 182

level of creditors' rights and protection in them. Some interesting mechanisms that should be applicable to maintain the capital are described below.

The first is the minimum capital requirement, which refers to the rule that a company may not incorporate a separate legal entity or commence its business unless it has reached the particular minimum level of capital or the share capital has fallen below a certain amount, such as one-half, in which case the company must call a meeting to resolve the problem.[85] Single member companies that only have one member are more likely to be undercapitalised compared to a traditional company; however, it is difficult to identify the level of the appropriate minimum capital requirement.

The second is the rule related to the payment of contributions, the aim of which is to acquire the full amount of legal capital that appears in the company's records;[86] for example, the duty to pay the full contribution, the minimum initial portion of the contribution at the time of incorporation, the estimated non-cash investment, the duty not to issue shares at a discount to par value, and the duty to provide information to creditors.[87] The member in a single member company also has several duties related to the payment of contributions, whether they are in the form of shares or not.

The third is the reduction of capital, which is a direct approach to reduce the company's capital. There are several reasons for a company to decrease its capital; for instance, to close a project, to reduce its loss so that it will be able to distribute a dividend or to reflect its actual financial status. The regulation regarding the reduction of capital is also considered to be one of the rules that attempt to maintain the capital because companies may not reduce it unless they have to comply with several processes required by law. Creditors may be entitled to object to the reduction of capital, since it could affect their position to claim the repayment of a debt.

The fourth is the distribution of the dividend. "Distribution" refers to the allocation of the company's assets to its members, whether in cash or otherwise. This

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[85] Armour J, 'Share Capital and Creditor Protection: Efficient Rules for a Modern Company Law' *The Modern Law Review* (May 2000, Vol. 63 No. 3 p. 355) <http://www.jstor.org/stable/1097174> accessed 1st September 2016, 365

[86] Sealy (n 80) 458

[87] Armour (n 85) 363

rule prohibits the unlawful distribution of profits. Members may only profit from the company by one of two approaches, namely, by earning income by working on a certain job for the company, which is governed by contract law and their agreement on a case-by-case basis or from the lawful distribution of the dividend. This is due to the assumption that an undue distribution of the dividend could affect the creditors' interests, even though a company may not yet have become insolvent because it reduces the expected amount of the claim. The dividend must be distributed in compliance with the regulations; for example, it should not be made unless the amount of net assets or cumulative profit meets the minimum requirement. If the company cannot meet this requirement, it may begin to reduce the capital.[88]

Although there are several rules regarding the maintenance of capital in private companies, there is no rule that a company must maintain its assets at a level at least equivalent to the amount of capital originally contributed by members. The assets or net worth of a company is often exhausted by the business activity and becomes less than the registered capital; thus, the principle of capital maintenance does not guarantee that creditors' debt will be fully paid. Moreover, this rule has become less restricted in some respects in recent years, possibly because of prejudice to reduce unreasonable difficulty for small companies like single member companies.

2.5.5 Mandatory Disclosure

Since limited companies are allowed to freely trade without their members incurring liability for the company's debt, they should suffer a certain loss of privacy by publicly disclosing their affairs and financial position for the benefit of the third parties that deal with them. If creditors cannot enforce against shareholders' assets, they need to be able to assess the company's creditworthiness. They should be allowed to access the public register to obtain important information about the company and its financial position. Although small companies like single member

[88] Armour (n 85) 365-367

companies may not be relevant to many outsiders, they are also required to disclose certain documents to the public as indicated below. [89]

Firstly, they are required to show information on business documents, which refers to the requirement that the company's information i.e. name, place of registration, company number and address of registered office must appear on business documents such as business letters and order forms in order to show that said transactions are conducted on behalf of the company.[90]

Secondly, they are to keep information at the registered office. A wide range of information is required to be kept at the company's registered office, such as the register of directors and members, minutes of meetings, annual reports and financial documents, for inspection by members of the company and disclosure to outsiders.[91]

Thirdly, they must provide public notification. They must announce significant changes in the circumstances in the company, such as the transformation of the company or the reduction of capital in order to notify to stakeholders such as creditors. Failure to do so, company may not claim said facts against outsides.[92]

Fourthly, they must register information at Companies House. This includes various documents, such as annual accounts, Memorandum and Articles of Association, notification of the registered office, directors and any charges created by the company over its assets, so that the public is able to access this information.[93]

2.5.6 Corporate Insolvency

"Insolvency" refers to a situation in which a person is unable to pay debts that have matured. In other words, it means an inability to pay debts as they fall due.[94] It would be said that insolvency is inevitable wherever jurisdictions recognise the use

[89] Hicks (n 10) 150 - 151
[90] ibid 151
[91] ibid 151
[92] ibid 152
[93] ibid 155
[94] INSOLVENCY, Black's Law Dictionary (10th ed. 2014)

of credit.[95] Historically, the corporate insolvency law has been developed separately from the law regarding individuals' insolvency. Corporate insolvency law is regarded as another field of law related to the allocation of companies' assets and debt.

Generally speaking, the insolvency of a company severely affects several relevant parties, i.e. debtors, creditors and the entire economic system. The corporate insolvency law plays an important role in balancing the benefits with the interests of these groups. Therefore, the aim of the corporate insolvency law is to mitigate this damage by attempting to restore the company's financial status, maximise the returns to creditors proportionately, as well as imposing sanctions on its directors and officers for culpable management.[96]

There are several ways to categorise insolvency, but three main types relate to the purpose of this study. The first is "commercial insolvency", which refers to a situation in which a company has cash flow difficulties, even though it still has sufficient total assets. The result of cash flow insolvency is that the company is unable to pay its debts as they become due. The second is "balance sheet insolvency"; which is a situation in which the amount of the company's assets is less than the amount of its existing liabilities. This situation may occur because of the company's contingent and prospective liabilities, such as severe liability in tort. Lastly, "ultimate insolvency" refers to the final position when all assets have been sold but the company is still unable to repay its debts in full.[97]

It can be seen from this chapter that single member companies have a distinctive characteristic from other types of entity, which unavoidably affects the applicability of the general law. Although company law and corporate insolvency law aim to provide default rules for creditors' rights and protections, the appropriate level of creditors' rights and protection in single member companies is still an interesting question. The law of a foreign jurisdiction, namely the UK, will be thoroughly examined in the next chapter with the aim of finding a benchmark of the appropriate creditors' rights and protection in single member companies.

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[95] Fiona Tolmie, *Introduction to corporate and Insolvency Law* (Sweet & Maxwell, 1998) 4

[96] Roy Goode, *Principles of Corporate Insolvency Law* (4th edn, Sweet & Maxwell) 59-63

[97] Sealy (n 80) 725

CHAPTER 3

CREDITORS' RIGHTS AND PROTECTIONS IN SINGLE MEMBER COMPANIES UNDER UK LAW

The UK law will be considered in this chapter in order to comprehend the characteristic of provisions and explore some cases in connection with creditors' rights and protections in single member companies. Since the mechanisms of UK company law and corporate insolvency are deemed to be default rules that fulfil each other to protect the interests of companies' creditors, the main focus of this chapter will be the UK law; namely, the Companies Act 2006 (CA), Insolvency Act 1986 (IA), Companies Directors Disqualification Act 1986 (CDDA) and case law.

3.1 Recognition of Single member Companies in the UK

3.1.1 Salomon Case[98]

The concept of the veil of incorporation was recognised by this leading case before the legislation was enacted. The fact is that Mr Salomon sold his shoe business to the Salomon Co Ltd The members of the company consisted of Mr Salomon, the controlling shareholder who had absolute power in making decisions, and his family members as his nominees who held only a small proportion of shares in order to meet the minimum requirement of the number of shareholders. This is considered as a kind of single member company de facto. Being faced with financial problems, the company began the process of insolvent liquidation and the liquidator filed a claim to hold Mr Salomon liable for the company's debts.

The court of the first instance decided that, even though fraud was not established on the facts of the case, the company was Mr Salomon's agent by virtue of the agency principle. As the principle, Mr Salomon should be indemnified for the

[98] *Salomon v Salomon Co Ltd* [1897] AC 22

debts incurred by the company, as his agent. The court of appeal rejected the agency argument; however, it held that the company was the trustee of Mr Salomon, who was the beneficiary. The company had been improperly established by a prohibited method. Family members or other shareholders were just dummies. The company was incorporated as a device to obtain protection from the law. Therefore, Mr Salomon should be indemnified for it. [99]

The House of Lords held that the company had a separate personality from its members. Although Mr Salomon was a director and controlling shareholder, it did not make him personally liable for the Salomon Company's debt. Even though the business was precisely the same after the incorporation as it was before, it was not the agent or trustee of the shareholders in law.[100] Besides, Mr Salomon's debenture had been validly issued; therefore, he was entitled to claim for payment from the company, similar to other secured creditors and with priority over unsecured creditors. Finally, although the business management was precisely the same after the incorporation of the company and the profit was still truly distributed to the same person, the company was not deemed to be the agent of the members.

The principle in this case was recognised as the veil of incorporation, which means that the company had a separate legal entity from its members. As was decided in this case, the court will generally not go behind the separation of the personality of the company. Although the company's shares had been subscribed by dependent members, the requirement of company incorporation had been satisfied; thus, the company was deemed to exist. The key point to be considered as a reference was the law, not economic reasons. This case confirmed the ability of a sole trader to transfer his business into a registered company and thereby insulate himself from the liabilities of the business.[101] It illustrates that the principle of separate personality can be applied, even when the corporation is actually a single member company.

[99] Susan McLaughlin, *Unlocking Company Law* (3rd edn 2015, Routledge) 83
[100] ibid 83
[101] ibid 82

3.1.2 Statutory Legislation

Afterward, the legislation of a single member company was introduced at the EU level by Directive 89/667/EEC (subsequently superseded by 2009/102/EC), in which it was stated that a company may initially be formed by a sole member or may become a single member company in cases where all the shares were subsequently owned by a sole member. This allowed member states to establish special provisions or penalties in cases where a natural person was the sole member of several companies or a single member company, or another legal person became the sole member of a company.[102] In the event that all the shares were subsequently owned by a sole member, the fact and identity of the said member must be recoded on file or entered in the register.[103] Decisions taken by the sole member should be recorded in minutes or drawn up in writing in order to exercise the power of a general meeting.[104] Contracts between the sole member and the company must be conducted in the same manner.[105] Besides, in the event that the legislation of the Member State allowed individual entrepreneurs to limit their liability, there was no requirement to recognise the formation of a single member company.[106]

The concept of single member companies was implemented into the Companies Act 1985 by virtue of The Companies (Single member Private Limited Companies) Regulations 1992 (SI 1992/1699) and the minimum number of members of companies in the UK was reduced from two to one for this purpose. This regulation provides the measure related to single member private companies limited by shares or guarantees. It allows a single person to form a company or be the sole member and allows the rules in relation to private companies to be limited by shares or guarantees to be modified for application to a single member company.[107]

Pursuant to the Company Law Review in 2000, 65% of companies had a turnover of less than £250,000 and 70% of companies were owner-managed or had

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[102] Article 2 of 2009/102/EC
[103] Article 3 of 2009/102/EC
[104] Article 4 of 2009/102/EC
[105] Article 5 of 2009/102/EC
[106] Article 7 of 2009/102/EC
[107] <http://www.legislation.gov.uk/uksi/1992/1699/made/data.pdf> accessed 12th February 2017

only one or two members.[108] These statistics showed that most companies established under UK law were quite small. They also reflected the necessity to reform the company law in order to be more appropriate for small companies. Pursuant to the reformation of company law in the UK Department of Trade and Industry, Company Law Reform (2005) (White Paper), one of the main purposes of which was to have appropriate regulations consistent with the 'think small first' approach. This was because, at first, the legislators focused on imposing company law on public companies while, in fact, most established companies were small. Therefore, the law needed to be revised in order to impose the proper legislation on small companies, i.e. easy to comprehend and comply with and no unnecessary cost.[109] Afterwards, the concept of single member companies was explicitly recognised in the Companies Act 2006, which contained some general provisions related to the incorporation and management of single member companies as shown below.

3.1.2.1 Method of Forming a Company

According to CA s. 7, *"A company is formed under this Act by one or more persons*". This provision explicitly allows a single person to establish a type of business called a "single member company", which will have a separate legal personality from himself. Similar to several jurisdictions, UK law recognises the formation of a single member company in the same Act, i.e. CA 2006 as other types of enterprises. There is no restriction regarding the qualifications of sole members in single member companies. Consequently, both natural and juristic persons can be a sole member and each person may establish several single member companies; moreover, a sole person may establish both private and public companies.[110]

3.1.2.2 Application of the Law to Single member Companies

Although single member companies are governed by CA 2006 like other types of businesses, the most significant characteristic, i.e. consists of a sole member, unavoidably affects the management of the company, such as a quorum at

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[108] Legal and Development Research Institute of Chulalongkorn University, *the Research on Recognition of Single Member Companies, Final Report* (11th September 2015) 53

[109] ibid 45

[110] Saleem Sheikh, *a guide to the Companies Act 2006* (first published 2008, Routledge-Cavendish) 179

meetings and decision-making method. Thus, it is necessary to modify some regulations to be applicable to single member companies. By virtue of CA s. 38,

"Any enactment or rule of law applicable to companies formed by two or more persons or having two or more members applies with any necessary modification in relation to a company formed by one person or having only one person as a member."

This provides that any law applicable to multi-member companies shall apply with any necessary modification to single member companies. This provision plays an important role in harmonising the regulations enforced on limited companies.[111] Therefore, whether companies consist of one or more persons, they are generally governed by the same rule.

3.1.2.3 Quorum at Meetings

Since single member companies consist of a sole member. It is specifically stated in CA s. 318 (1) that *"In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum."* Quorums at meetings of single member companies should consist of only one qualifying person, i.e. the sole member himself or a proxy.

3.2 Creditors' Rights and Protections under Company Law

Due to the fact that single member companies are governed under UK law by the same act as traditional companies, the creditors' rights and protections are subject to similar rules as other types of companies with modifications. The relevant issues under company law are firstly considered below.

3.2.1 Share Capital

Under UK law, companies are limited by guarantees and by shares. A company is limited by a guarantee if its members' liability is limited to the amount

[111] ibid 244

agreed to be contributed to the company in the event of it being wound up;[112] however, this is not commonly established in the UK.[113] The other type of company is limited by shares. The members' liability is limited to the amount unpaid on the shares they hold.[114] Single member companies may also be limited by guarantees or shares. The significant issue is that there must only be a sole member of the company.

Shares are transferable similar to other assets; however, the transfer of share in a private company may be restricted as provided for in the Articles.[115] The contribution should consist of money or money's worth;[116] therefore, it can also consist of labour. Members are liable to contribute the subscribed amount to the company's assets. The directors may request members to pay unpaid contributions at any time but, in practice, the payment is usually made at the time of incorporation.[117] Besides, members generally have the right to make decisions, to a dividend, to return contributed capital and surplus assets on winding up based on their subscribed shares.[118]

3.2.2 Capital Maintenance

The maintenance of the company's assets is one of several approaches aimed to protect creditors. This mechanism preserves the assets enforceable by creditors. Some relevant interesting issues are discussed below.

3.2.2.1 Reduction of Capital

The reduction of capital is a procedure by which the amount contributed by the shareholders is decreased. This rule can be found in Part 17, Chapter 10 of the Companies Act 2006 and it should be made by a special resolution

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[112] CA s. 3(3)
[113] McLaughlin (n 99) 46
[114] CA s.3(2)
[115] CA s. 544(1)
[116] CA s. 582(1)
[117] Legal and Development Research Institute of Chulalongkorn University (n 108) 114
[118] CA s. 33; Ann Ridley & Chris Shepherd, *Company Law* (first published 2015, Routledge) 92

of the members. Subsequently, it must be either supported by a solvency statement of the directors for a private company limited by shares or by court confirmation in other cases.[119]

A special resolution for a reduction of capital may generally be proposed in writing or at a general meeting. The sole member of single member company is also able to make this decision based on CA s. 318. Afterwards, the duty to make an insolvency statement is imposed on the directors.[120] This was a new approach to the reduction of capital introduced by CA 2006. It is an opinion regarding the company's ability to repay the debt based on each director. It covers two types of debt, the first of which are the actual debts that exist at the date of the statement, while the second are the debts that are expected to arise and may arise in the year following the date of the statement. This approach enables the board of directors to decide whether the creditors' interest is detrimentally affected by the reduction in capital. Each director has to confirm that there is no evidence at the date of the statement that the company could not pay its debts. This provision requires the directors to take account of prospective and contingent liabilities in forming their opinion.[121] If there is no reasonable ground in the conduct of the said solvency statement, the directors shall be liable for an offence.[122]

Alternatively, the court may exercise its power to confirm the reduction of capital according to CA s. 645 to 651. The court has its own discretion to confirm the reduction of capital on appropriate terms.[123] Creditors who are entitled to any debt can object to the reduction of capital.[124] The court shall establish a list of creditors entitled to object. In the event that the company's officer intentionally or negligently conceals the names of creditors or misrepresents the nature or the amount of the debt, he shall be liable.[125] Moreover, liability is also imposed on a member

[119] CA s. 641
[120] CA s. 642
[121] David Kershaw, *Company Law in Context: Text and Materials* (first published 2009, Oxford University Press 2009) 792
[122] CA s. 643
[123] CA s. 648
[124] CA s. 646
[125] CA s. 647

against creditors.[126] Whether or not all the creditors on the list consent to the reduction or the company takes steps to secure the claims, the court has the discretion to confirm the reduction on terms that it thinks fit.[127]

3.2.2.2 Minimum Capital Requirement

The minimum capital requirement rules are only imposed on public companies in the UK before they begin trading.[128] These requirements do not extend to private companies so that a company can be incorporated by issuing one £1 share to one member and start its business. Also, private companies are not required to provide additional capital, even where the company's net assets or shareholder equity fall dramatically.[129]

3.2.2.3 Distribution of Dividend

The second council Directive on company law (77/91/EEC) encouraged the reformation of the regulation related to distribution in companies. Pursuant to the preamble of the Directive, regulations regarding the maintenance of capital should be adopted in order to secure creditors, especially by restricting the distribution to shareholders. The criteria for distribution appeared in Article 15 of the Directive and were later added to Part 23 of CA 2006.

There are several approaches of distribution recognised under UK law; for example, the distribution from surplus calculated by the accounting method, i.e. the distribution can be made where business activities generate a profit over a specified time period, the distribution relies on the board of directors' decision, and the distribution is approved by a third-party such as the court. Notwithstanding, the common rule for distribution is that it should be taken from the profits, i.e. by the accumulated profit test, which considers the amount of realised profit and losses, as appears in CA s. 830. Besides, it imposes liability on members who know or have reasonable grounds at the time of the distribution to believe that it does not comply with the applicable distribution rules. Such members are liable to pay to the company an amount equal to the amount that exceeds the distribution the company could

[126] CA s. 652 – 653
[127] CA s. 648
[128] CA s. 761 - 763
[129] Kershaw (n 121) 750-751

lawfully make.[130] Other members who also have received the distribution, but were not aware that it was unlawful, will not be liable to make compensation under this provision.

In terms of the liability of the directors, in fact, general director liability appears in CA s. 174: the duty of care, skill and diligence. Directors have the duty to approve the distribution with care and reasonable diligence and to take reasonable care in the preparation of the relevant accounts or the determination of the dividend. However, the UK courts have not used the duty of care as grounds for directors' liability for unlawful distribution; instead, they regard unlawful distribution as analogous to the breach of trust law. Although directors are not explicitly required to consider the interests of creditors when making the dividend, they could be liable for unlawful distribution. This is because they must have been aware, or ought to have been aware that the dividend payment exceeded the amount that would be allowed under the applicable distribution regulation, or they relied on accounts that were inaccurate due to incompetence or fraud on the part of the company's officers or employees. Nevertheless, by virtue of CA s. 1157, this liability may be excused by the fact that the director has honestly and reasonably had regard to all the circumstances.

To illustrate this point, in the case of *Re Exchange Banking Company (Flitcrof's Case)* [1882] Ch D 519, the directors were clearly found to be at fault because they were aware that the company had not been making the profits as declared. The court treated the directors as trustees who were in breach of trust and were consequently liable to compensate the trust for lost funds regardless of fault.

Another example of unlawful distribution was the case of *Bairstrow v Queens Moat Houses Plc* [2001] EWCA Civ 712, in which it was found that the directors' liability does not depend on the company's solvency. If the directors suggest that the company should pay a dividend, which is regarded as ultra vires and an unlawful act, even though the company is still solvent, it could not be an excuse for the directors to escape liability.

[130] CA s. 847(2)

3.2.3 Mandatory Disclosure

Another approach to protect the relevant parties' rights is an examination by an external organ or to disclose the company's information to the public. There are certain provisions that reflect transparency, as shown below.

3.2.3.1 Register of Information

Although whether the number of shareholders is only one or more is irrelevant to the existence and management of a company, there is a specific provision for single member companies to record any change of numbers in the company's register of members in order to show the current status of the company.[131] The name and address of the sole member and a statement declaring that the company only has one member should be recorded in the company's register. Likewise, in cases where the number of members falls to one or an unlimited company with only one member becomes a limited company on re-registration, the same information should be registered together with the date on which the company became a single member company. On the other hand, the said statement is also required if the membership of a limited company increases from one to two or more members. If the company fails to provide it, the company and every officer of the company who is in default shall be liable for an offence imposed in the Act.[132]

3.2.3.2 Records of Decisions by Sole Members

Another specific mechanism to protect the creditors of single member companies is to impose the duty to record decisions made by the sole member. The aim of this approach is to disclose the member's internal intention regarding the management of the business. A record must be provided of the decisions made in the company unless they are concluded in a written resolution. Failure to comply with this provision does not affect the validity of the decision, but the member shall be liable for an offence.[133]

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[131] Legal and Development Research Institute of Chulalongkorn University (n 108) 135
[132] CA s. 123
[133] CA s. 357

3.2.3.3 Contract with Sole Members

Another mechanism specifically imposed on single member companies which reflects the transparency rule involves a contract between the sole member who is also a director of the company and the company. Apart from the contract being entered into in the ordinary course of the company's business, it shall be made in writing or recorded, either in a written memorandum or in the minutes of the first meeting of the directors following the making of the contract. A shadow director, i.e. a person who is not appointed as a director, but has the conduct of a director, is also subjected to this provision. Failure to comply does not affect the validity of the contract, but every officer who is in default shall be liable for an offence imposed by the Act.[134] The underlying reason for this provision is that any agreement between a company and its member carries the risk of a conflict of interest, which is much greater in the case of a single member company.[135] It is to ensure that a record is kept where there is a high risk of the lines becoming blurred between where a person acts in his own capacity and when he acts on behalf of the company. This provision is also of particular interest to the liquidator when a company becomes insolvent.[136]

3.2.3.4 Accounts, Reports and Audit

One of the methods to protect creditors' rights is for financial documents to be kept properly and disclosed to the public. This will allow third persons to access crucial information regarding the financial status of the company in order to estimate the risk of engaging in a transaction with it. This rule generally appears in CA part 15: accounts and reports and part 16: audit, which consist of significant provisions as shown below.

Firstly, every company must keep proper accounting records based on the specified regulation.[137] Failure to comply with this duty will make every officer

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[134] CA s. 231

[135] Assamen M. Tessema, 'Comparative Single member Companies of Germany, France and England: A Recommendation to Ethiopia' 28 <https://papers.ssrn.com /sol3/papers.cfm?abstract_id=2193070> accessed 8th February 2017

[136] Sheikh (n 120) 482

[137] CA s. 386

of the company involved in this act liable for an offence.[138] The accounting record must be kept for a specific period and failure to do so will make the officer involved liable for an offence.[139] Secondly, the directors must give a true and fair view of the accounts of the company, including the assets, liabilities, financial position and profit or loss.[140] Also, they have the general duty to prepare individual accounts in accordance with CA s. 394 – 397. Finally, the company has the duty to submit documents required by law, i.e. accounts and reports, to the registrar in order to disclose its information to the public each financial year.[141] There is also a penalty for the failure to comply with these duties.[142]

Notwithstanding, some of these duties regarding accounts and reports may be exempted or simplified if companies qualify as small companies under UK law, which will be determined every financial year. Based on the current regulation, they must satisfy two are more of three criteria. Firstly, the "turnover", i.e. the sales volume of the company, must not exceed £10.2 million. Secondly, the "balance sheet total", i.e. the aggregated amount of the company's assets, must not exceed £5.1 million. Lastly, the average number of employees each month must not exceed 50.[143] Rather than focusing on the type of company, these provisions stipulate distinctive duties regarding accounts and reports for different types of company by considering the turnover, balance sheet total and number of employees. For example, general companies are required to prepare strategic reports and directors' reports according to CA part 15 chapters 4 and 5, but small companies are exempted from these duties. Another example is that the annual accounts of general companies must be audited according to CA s. 475, 495 and 498, but small companies are exempted from the requirement of an audit based on CA s. 477. According to statistics, around 80% of enterprises in the UK are exempted from the duty to submit a complete financial report; they are only required to submit abbreviated accounts and are exempted from examination by an auditor.

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[138] CA s. 387
[139] CA s. 388 – 389
[140] CA s. 393
[141] CA s. 441
[142] CA s. 451 – 453
[143] CA s. 381 – 382

3.2.4 Disregard of Corporate Entities

The UK jurisdiction recognises the principle of lifting the corporate veil or piercing the corporate veil, which is deemed to be an exception of the principle of separate legal personality. The court has the discretion to disregard the separate legal entity of a company for the sake of justice. Apart from cases where the court can exercise this discretionary power by referring to a particular statute, it may disregard the corporate personality in special circumstances where the corporate form is a façade; for example, the company has been incorporated as a vehicle for the owner to behave dishonestly, such as to defraud creditors or evade obligations[144] or there is a lack of separate business and finance between the company and its member.

Focusing on the cases of single member companies, although the court in the leading case, *Salomon*, had decided that the creditor could not enforce the member to repay the debt, there have also been other cases when the court has pierced the corporate veil due to the abuse of the corporate form, as shown below.

In the case of *Gilford Motor Co Ltd v Horne* [1993] Ch 935 (Court of Appeal), EB Horne, the first defendant had been employed by the plaintiff. During the employment, EB Horne had entered into an agreement that he would not contact the company's clients after the termination of his employment. However, when his employment was terminated, EB Horne began his own business and undercut the plaintiff's prices. This new business bore the company name, 'J M Horne & Co Ltd', and the second defendant, who was his wife, was employed as a sole member and director of the company. In this case, the court held that the covenant had been broken and granted an injunction against both defendants, which reflects the disregard of the corporate veil principle.

The abovementioned decision was emphasised in another case, *Jones v Lipman* [1962] 1 WLR 832, in which the defendant had agreed to sell some land to the plaintiff. However, the defendant subsequently transferred it to a company that he had formed for this sole purpose, which meant that he effectively owned and controlled the other transaction making it impossible to request an order for a specific

[144] Ferran Eilis, *Principles of Corporate Finance Law* (first published 2008, Oxford University Press) 17

performance. In this case, the court disregarded the veil of corporation and ordered a specific performance against the defendant and his company.[145]

3.2.5 Directors' Specific Duties and Liabilities

By virtue of CA s.154 and 155, each private and public company must have at least one and two shareholders respectively. Moreover, each company must have at least one director who is a natural person.

Although directors did not have the duty to take creditors' interests into account in the past, this position has now changed based on the idea that shareholders and creditors have the same relationship with the company, i.e. contributing a capital investment. Since companies are established for the benefit of shareholders, there must be safeguards for the benefit of the creditors. The directors' specific duties are designed to prevent the expropriation of creditors' wealth and protect their legitimate expectation when providing the company with credit.

Apart from fiduciary duties and the duty of care and skill, a wide range of statutory provisions impose various duties on directors that they owe to the company; for instance, to act within their power, to promote the success of the company, to avoid a conflict of interest, and not to accept benefits from third persons. Pursuant to CA s. 172, directors are generally required to promote the success of the company for the benefit of its members. They also have the duty to regard the interests of a range of other relevant persons, such as employees, suppliers and consumers, which does not include creditors.

Nevertheless, it is provided in the last paragraph of CA s. 172 that the duty to the above-mentioned persons is subject to any enactment or rule of law that requires directors to consider or act in the interests of the creditors of the company. In this respect, particular relevant rules appear in certain provisions of the Insolvency Act 1986, which will be reviewed later in this thesis.[146] If the directors of a company know or ought to have known such circumstances, but fail to exercise their duty of

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[145] Len Sealy & Sarah Worthington, *Cases and Materials in Company Law* (9th edn 2010, Oxford University Press) 65-66

[146] Kershaw (n 121) 722

care and skill in accordance s. 172 of the CA 2006, they shall be liable for any losses incurred by the creditors. Moreover, it is suggested that directors should also be bound to take a balanced view of the risks to creditors at an early stage in the onset of insolvency. Directors should consider the interests of members and creditors together in cases where insolvency is still avoidable, but there is a substantial risk.[147] Directors' specific duty concerning creditors' interests is recognised in several cases, as shown below.

In *Winkworth v Edward Baron Development Co Ltd* [1986] 1 WLR 1512 it was held that *"a company owes a duty to its creditors to keep its property inviolate and available for repayment of its debt."* This is in order to ensure that the affairs of the company are properly managed and not exploited for the benefit of the directors themselves to the detriment of the creditors.

According to the fact in *West Mercia Safetywear Ltd (in liq) v Dodd* [1988] BCLC 250, Mr Dodd, a director of both Aj Dodd & Co Ltd and its subsidiary, West Mercia Safetywear Ltd., had personally guaranteed the overdraft of Aj Dodd. Despite West Mercia being in financial difficulty, Mr Dodd had arranged for the repayment of a debt West Mercia owed to Aj Dodd. The liquidator found that the purpose of the said repayment was to reduce Aj Dodd's overdraft, which would then reduce the amount owed by Mr Dodd under the personal guarantee. The liquidator requested the court to order that the said payment amounted to misfeasance and a breach of trust. In the court of the first instance, it was found that there was no breach of duty, but the judge in the high court referred to a former case, *Kinsela v Russell Kinsela Pty Ltd* (in liq) [1986] 4NSWLR, in which the principle that the interest of creditors 'intrude', viz. replace members' interest in the event of insolvency was established. Therefore, the court held that Mr Dodd was liable for breach of duty as a result of disregarding the interests of creditors.

Since the creditors still have an interest in the company's assets, they have an incentive to ensure that the management or liquidation proceedings will maximise the repayment of the debt in the event of insolvency. On the other hand, considered from the members' perspective, they will no longer expect to acquire a distribution in

[147] Hicks G & S.H. Goo, *Cases and Materials on Company Law* (6th edn 2008, Oxford University Press) 371

the event that the company becomes insolvent and, as a consequence, they may undertake a high-risk transaction in the expectation that it will resolve the company's financial difficulties if it generates a huge profit. This transaction will avoidably affect the expected value of the creditors' claim.

The change of beneficiary from members to creditors restricts the director's scope of conduct in several aspects. However, it should be noted that there is an exception, which is that sometimes a risky investment may be allowed if it made for the best interests of the creditors.[148]

Moreover the scope of directors' duties to consider the creditors' interest under this provision is extended to events prior to the insolvency due to the fact that, although the company is still solvent, the creditors' interests should also be a cause of concern. For instance, it was stipulated in *Colin Gwyer & Associates Ltd v. Palmer* [2002] EWHC 2748 (Ch), that when a company becomes insolvent or even "doubtful solvency" or on "the verge of insolvency", i.e. it is likely to become insolvent and the creditor's claim for payment of the debt becomes riskier, the directors must regard the interests of the creditors 'as paramount' and take them into account when exercising their discretion. In other words, directors' must act to generate the highest profit for the creditors.

Another example appeared in *Re MDA Investment Management Ltd Whalley v Doney* [2003] EWHC 2277 (Ch), when it was established that 'technical insolvency', i.e. where the value of the assets is less than that of the liabilities on the balance sheet, the duties the directors owe to the company are extended to the interests of the company's creditors.

Lastly, it was decided in *Nourse LJ in Bardy v Bardy* [1988] BCLC 20 that, when a company becomes insolvent, or even doubtfully insolvent, in reality, the interests of the company are solely the interests of the existing creditors.[149]

[148] Kershaw (n 121) 723
[149] Kershaw (n 121) 724

3.2.6 Creditors' Rights and Protection under CDDA 1986

The Company Directors Disqualification Act 1986 (CDDA) is regarded as another regulation in which the Secretary of State for Business Enterprises and Regulatory Reform is authorised to bring an action to disqualify the directors of a company. By virtue of s. 1, the court can make a disqualification order against a director, liquidator, administrator, receiver or manager of the company.

This law contains several grounds for disqualification based on general misconduct; for example, disqualification on conviction of an indictable offence,[150] for persistent breaches of company legislation,[151] for fraud in the winding up,[152] on summary conviction.[153] A director may also be disqualified for being unfit to manage the company in the event that it becomes insolvent.[154] Moreover, the court may also make a disqualification order against the said person when it makes a declaration under s. 213 and 214 of IA which will be explained in the next topic.[155] This law operates as an additional approach to make a contribution to the company due to its wide scope. Creditors are then saved by disqualifying these unfit directors.[156] An example of the use of this law is *Browne-Wilkinson VC in Re Lo-Line Electric Motors Ltd.* [1988] Ch 477, in which it was explained that the main purpose of this law is not to punish the individual, but to protect the public from any further conduct of companies by persons who used to be directors of insolvent companies.[157]

3.3 Creditors' Rights and Protection under Insolvency Law

As mentioned above, it is stipulated in CA s. 172 that the duty to promote the success of the company is subjected to the interests of the company's creditors. Creditors are the most significant category of stakeholders, who are given special

[150] CDDA s. 2
[151] CDDA s. 3
[152] CDDA s. 4
[153] CDDA s. 5
[154] CDDA s. 6
[155] CDDA s. 10
[156] Hicks (n 147) 346
[157] Kershaw (n 121) 740

legal attention, not only under the CA, but also the IA.[158] The interests of creditors will especially be severely affected in the event of insolvency; therefore, directors are required to consider their interests first in this situation.

In fact, the process of insolvency law is quite distinctive in each jurisdiction based on the regulation designed by each state's authority. In the UK, individuals become bankrupt when companies go into liquidation or are wound up.[159] The corporate insolvency law appears in the IA and there are four separate core procedures, which are described below.

Firstly, a voluntary arrangement is one of the new approaches introduced by the IA 1986. It refers to a situation in which the company agrees the composition of the debt with all the creditors.

Secondly, administration is an alternative to winding up in cases where there is a reasonable prospect that the whole or part of the company's business will be saved. It also aims to maximise the creditors' interests rather than directly proceeding to the winding up process.

Thirdly, receivership is a process in which a receiver is appointed to manage the whole or part of the company's property.

Fourthly, winding up is the process of liquidating the assets of a company before the dissolution.[160] In a solvent company, this will be done based on the members' voluntary winding up, in which case, the creditors will be repaid in full and the remaining amount will be returned to the members. On the other hand, an insolvent company can either be wound up voluntarily by creditors or compulsorily by the court. Both types of winding up are deemed to be debt-collecting procedures from the creditors' perspective; however, in the event of insolvent company, the recoverable debt is prone to be low due to the fact that the liabilities will greatly exceed the remaining assets.[161]

For the purpose of considering the point of time when the relevant parties can initiate each procedure under the IA, it is necessary to consider "the inability to

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[158] Interests of Stakeholders (n 33)
[159] Roy Goode, *Principles of Corporate Insolvency Law* (4th edn, Sweet & Maxwell) 1
[160] Hicks (n 147) 593
[161] Ibid 594

pay debts", which appears in IA s. 123 and refers to the company's factual insolvency or cash flow insolvency.

The provisions examined below will facilitate an understanding of the creditors' rights and protection under the IA.

3.3.1 Transaction Defrauding Creditors

The third group of miscellaneous matters that relate to both company and individual insolvency, which includes the general interpretation, final provisions, part XVI provisions against debt avoidance are the general remedies for vulnerable creditors and they appear in s. 423 – 425 of the IA. "Transaction defrauding creditors" means transactions that are undervalued. This refers to a situation in which the debtor enters into a transaction with the company, but receives no benefit or significantly less benefit than the value provided by the company.[162] It requires internal intention, i.e. the company aims to put the assets beyond the reach of existing claims against it or to deliberately prejudice the interests of the victims.[163] This transaction can be either conducted before or after the formal proceedings of winding up or administration. The court may make an order to restore the position or protect the interest of the victims of the transaction and may indicate several provisions.[164] The provision allows the backward avoidance of transactions that have subsequently impaired the position of the creditors in the expected amount of a claim for repayment when the company becomes insolvent.[165] The official receiver, liquidator, administrator or victim of the transaction i.e. anyone who suffers actual or potential prejudice, may apply for an order by the court without any statutory limit of time.[166] This provision is a kind of general remedy that has the widest scope in providing creditor protection.

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[162] IA s. 423 (1)
[163] IA s. 423 (3)
[164] IA s. 423 (2) and 425 (1)
[165] Thomas Bachner, *Creditor Protection in Private Companies: Anglo-German Perspectives for a European Legal Discourse* (first published 2009, Cambridge University Press) 39
[166] IA s. 424

Under the first group of part company insolvency, companies winding up, part VI miscellaneous provisions applies to companies that are insolvent or in liquidation, adjustment of prior transactions (administration and liquidation) and the two provisions described below are significant mechanisms for vulnerable transactions.

3.3.2 Transaction at an Undervalue

The definition of a transaction at an undervalue is the same as appeared above in IA s. 423 (1); however, it is specifically applied when the company is in the process of administration or liquidation. The transaction must have been entered into within the relevant time, i.e. in the period of two years before the beginning of the insolvency.[167] The court shall order the company to be restored to the position in which it would have been if it had not entered into the said transaction. The court shall not make an order under this provision if the transaction was entered into in good faith and for the purpose of continuing the business.

3.3.3 Preferences

Under IA s. 239, to give preference means that the company does something that affects the position of a person who is one of its creditors or a surety or guarantor to make it better than it would otherwise have been. The company must also have been influenced by that person to give him preference. Parallel to IA s. 238, this provision is applied in liquidation or administration and the court shall make the same order, i.e. to restore the company to the position it would have been in without the said preferences. The preferential transaction must have been entered into within the period of 6 months or 2 years in cases where the other party is a person who was connected with the company before it became insolvent.[168]

This provision is complemented by IA s. 245, which relates to the invalidation of certain floating charges, which would otherwise have provides their

[167] IA s. 240
[168] IA s. 240

holders with a security right that ensures their priority over the unsecured creditors of the company. In other words, the provision seeks to prevent companies from creating floating charges to secure past debts, since every floating charge created to secure a pre-existing debt would equally come within the test of preference under IA s. 239.

The distinction between a transaction at an undervalue appears in IA s. 238 and 423 and the preference in IA s. 239 is that the transaction at undervalue aims to protect the interests of creditors collectively by ensuring that the assets are rightly maintained, while the preferences are concerned with adjusting the rights among creditors.[169] A transaction at an undervalue concerns payments or transfers that reduce the company's net asset value, but it does not affect the payments to creditors.[170]

Under the first group of part company insolvency, companies winding up, part IV relates to the winding up of companies registered under the Companies Act, chapter X malpractice before and during liquidation, penalisation of companies and company officers, investigations and prosecutions, penalisation of directors and officers and it contains some important provisions, as shown below.

3.3.4 Summary remedy against delinquent directors, liquidators, etc.

In the course of winding up, an officer, administrative receiver or any person who participates in the management of the company shall be responsible for the failure to comply with their duties in relation to the company.[171] The court may give an order to compensate for such default based on an application by the official receiver, liquidator, creditor or contributor.[172]

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[169] Thomas Bachner, *Creditor Protection in Private Companies: Anglo-German Perspectives for a European Legal Discourse* (first published 2009, Cambridge University Press) 50-55

[170] Roy Goode, Principles of Corporate Insolvency Law (4th edn, Sweet & Maxwell) 530

[171] IA s. 212

[172] IA s. 213

3.3.5 Fraudulent Trading

Fraudulent trading appears in IA s. 213. It refers to a situation in which the relevant persons have behaved dishonestly while conducting the company's business with the intention to defraud either the company's creditors or other persons' creditors in the course of the winding up. The intention or recklessness of the relevant persons must be proved.[173] The conduct under this provision could be any activities, whether they were undertaken once or several times.[174] The words "defraud" or "fraudulent purpose" implies actual dishonesty; for example, a company incurs debts at a time when the directors know that there is no reasonable prospect that creditors will receive the repayment of those debts. This generally infers that the company is conducting its business with intention to defraud.[175]

This provision has a wide scope because it can impose liability on any persons, such as directors, controlling shareholders or any third person who know about the said fraudulent trading. The liquidator may take legal action against the relevant persons by imposing a liability on them to make a contribution to the company's assets when they have engaged in fraudulent trading to defraud creditors.

Moreover, fraudulent trading is also actionable as a criminal offence, whether the company is in the process of being wound up or not, as appears under CA part 29, s. 993: Offence of fraudulent trading. In addition to these civil and criminal liabilities, the director may be disqualified based on CDDA s. 4.

3.3.6 Wrongful Trading

Wrongful trading appears in IA s. 214. The criteria of this provision are much more complex than those in IA s. 213. It refers to a situation in which a director, former director or shadow director of a company knew or ought to have known that the company was inevitably going into insolvent liquidation, but still engaged in

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[173] Ann Ridley & Chris Shepherd, *Company Law* (first published 2015, Routledge) 268

[174] Wuthiphong Wongsrikeaw, *Liabilities of Managing Director in Case of the Bankruptcy of Company* (Faculty of Law, Thammasat University 2006) 35

[175] Maugham J, *Re William C Leitch Bros Ltd*

improper conduct related to the business. The knowledge under this provision is determined based on the knowledge of a reasonable diligent director who has the duty of care. The consequence of this provision is that the court may order said directors to make a contribution to the company's assets in response to an application by the liquidator.[176] Different from fraudulent trading, there is no criminal liability for directors whose conduct is deemed to be wrongful trading under this law. However, there is also an exception in that the directors shall not be liable under this provision if they have taken every step to minimise the creditors' loss.

The aim of the provisions on fraudulent and wrongful trading is to prevent the abuse of limited liability by companies. They consider that directors may continue to trade and incur further debts at a time when the company is in financial difficulties with the result that creditors' losses will be increased.[177]

3.3.7 Restriction on Re-use of Company Names

Under IA s. 216 and 217, when a company has gone into insolvent liquidation, the persons who have held the position of directors or shadow directors within 12 months ending before the commencement of the liquidation of the said company, are prohibited from using the said company name or a name that is similar or participate in the management of a company with the prohibited name for 5 years. The said persons shall be personally responsible for all the relevant debts of the company if they fail to comply with this provision.[178]

The aim of these provisions are to reduce the problem of phoenix syndrome, i.e. a situation in which a person who has been trading through a company allows it to go into insolvent liquidation and then forms a new company with a similar name, employees and business.[179] This new phoenix company will be free from any liabilities of the former company; thus, the creditors of the former company will be unable to recover their debts.

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[176] Kershaw (n 121) 730
[177] Hicks (n 147) 629
[178] IA s. 217
[179] Hicks (n 147) 763

In summary, the existence and the management of a company under UK law does not depend on the number of members. Single member companies are generally governed by the same regulations as traditional companies. The principal mechanisms for creditors' rights and protections are the mandatory disclosure of information regarding the management of the business and the financial status of the company, and the liabilities against directors or other relevant officers. There are only a few specific provisions on single member companies related to their characteristic of having a sole member; for instance, the quorum at meetings, the application of the law to single member companies, the record of decisions by the sole member and contracts with the sole member. It could be said that the key to the success of the law on single member companies in the UK is the harmonisation between the regulations imposed on both single and multi-member companies. Specific regulations are imposed either to reduce unnecessary formality or prevent hazardous conduct in the management of the company. Since sole members will only be obliged with proper duties, they will have an incentive to establish a single member company. Therefore, the problem of nominee shareholders is perfectly solved.[180] Meanwhile, creditors' interests are also appropriately protected by both traditional and specific mechanisms so that they will confidently engage in business transactions with single member companies

[180] Legal and Development Research Institute of Chulalongkorn University, *the Research on Recognition of Single Member Companies, Final Report* (11th September 2015) 55

CHAPTER 4

CREDITORS' RIGHTS AND PROTECTIONS IN SINGLE MEMBER COMPANIES UNDER THAI LAW

The latest Draft Law on Single member Companies Act B.E....., which was approved by the Council of Ministers on the 24th January, 2017 (the draft law) and The Bankruptcy Act B.E. 2483 will firstly be examined in detail in this chapter. This will be followed by an analysis of the provisions that relate to creditors' rights and protections in single member companies using a comparative approach.

4.1 Recognition of Single member Companies

Similar to foreign countries, the Thai government has realised that small businesses play an extremely important role in the country's economic growth. Therefore, it has enacted the Small and Medium Enterprise Promotion Act B.E. 2543 in order to promote the success of small and medium enterprises. The criteria of these enterprises are determined by the number of employees and the value of their fixed assets as shown below.

Table 4.1 Criteria of small and medium enterprises based on the Small and Medium Enterprise Promotion Act B.E. 2543[181]

Type of Enterprise	Number of Employees (persons)		Value of Fixed Assets (million baht)	
	Small	Medium	Small	Medium
Production	Not more than 50	51-200	Not more than 50	51-200
Wholesale	Not more than 25	26-50	Not more than 50	51-100

[181] The Revenue Department, 'SMEs Businesses' (23 March 2010) <http://www.rd.go.th/m/fileadmin/user_upload/porkor/taxused/SMEs.pdf> accessed 15th June 2017, 1

Retail	Not more than 15	16-30	Not more than 30	31-60
Service	Not more than 50	51-200	Not more than 50	51-200

According to this Act, The Office of Small and Medium Enterprise Promotion (OSMEP) is authorised to conduct research related to small and medium enterprises in order to design a strategy to encourage the establishment of these types of companies. Based on the Strategy Plan of The Office of Small and Medium Enterprise Promotion no. 3 B.E. 2555 – 2559, there were more than 2.7 million small and medium enterprises in 2015, which is the equivalent to 90% of all enterprises, 42% of GDP, 77% of employment and 28% of the export value of the country. There are significant strategies to review and amend the law regarding the tax burden and reduction of obstruction to the management of small and medium enterprises. These strategies also appear in the current Strategy Plan of The Office of Small and Medium Enterprise Promotion no. 4 B.E. 2560 – 2564. However, these enterprises are still confronted by several economic problems and the only enterprises that are currently stable are those that have access to governmental assistance.[182]

The initial approach to encourage these small businesses is to have them properly registered. Based on statistics from the Department of Business Development, only 620,082 businesses were registered as juristic persons as of 2015. This implies that many businesses have still not been registered in the system and, as a result, the government cannot effectively promote their growth.

Besides, according to statistics in the same year, 439,320 enterprises are private limited companies, the capital of 89.6% of which is less than 10 million baht. This means that most companies registered under Thai jurisdiction are quite small enterprises, as shown below.

[182] Legal and Development Research Institute of Chulalongkorn University, *the Research on Recognition of Single Member Companies, Final Report* (11th September 2015) 7

Table 4.2 Number of private limited companies based on their registered capital[183]

Registered Capital	Number of Private Limited Companies	Percentage (%)
0 – 1 Million	239,759	54.58
1 – 5 Million	132,012	30.05
5 – 10 Million	22,071	5.02
10 – 50 Million	26,698	6.08
50 – 100 Million	7,753	1.76
100 – 1 Billion	9,881	2.25
≥ 1 Billion	1,146	0.26
Total	**439,320**	**100**

Most of these companies consist of only three to four shareholders as shown below.

Table 4.3 Percentage of private limited companies based on the number of shareholders[184]

Number of shareholders (persons)	Percentage of total companies (%)
3	47.72

[183] ibid 14
[184] ibid 16

4	10.67
5-9	30.64
≥10	10.97

The interesting issue is that 97.96% of these companies consist of a sole shareholder, who holds more than 50% of the shares. Furthermore, in 82.33% of the total number of companies, the sole shareholder holds more than 90% of the shares, which implies that there is only one actual owner of each company, as shown below.

Table 4.4 Percentage of private limited companies based on the proportion of shares held by one shareholder[185]

Proportion of shares held by one shareholder (%)	**Percentage of total companies (%)**
50 – 75	12.62
75 – 90	2.99
90	82.33
Total	97.94

As the government agency dealing with the registration of businesses, the Department of Business Development, Ministry of Commerce also realised this necessity, which is why it considered the recognition of single member companies in order to facilitate the accessibility to funding and reduce the obstruction in the management of the business. The concept of a single member company would facilitate traders who preferred to establish owner-managed companies and reduce the

[185] ibid 18

conflict between shareholders. It would eventually attract more foreign investment to Thailand because of the ease of doing business there.

Due to the unique characteristics of this kind of company; namely, a separate legal personality, limited liability, centralised management, shareholder control and transferability of shares, traditional provisions enforced with multi-member companies is inappropriate to apply with a closely-held companies like single member companies.[186] Moreover, based on the current statutory provisions, i.e. CCC, companies are incorporated by a contract[187] and the minimum number of shareholders is three.[188] Therefore, a sole trader cannot establish a company under the CCC without nominees to hold shares for him. This regulation causes a problem with nominees and a conflict of interest among the shareholders. Similar to other countries, nominee shareholders are acceptable in practice; as a result, the regulation regarding the minimum number of shareholders is unenforceable in reality. This implies that the law cannot prohibit the decision to choose a business organisation; therefore, it is necessary to draft a new law to recognise the concept of a single member company as an alternative for traders to establish appropriate business organisations.[189]

There is currently an attempt to recognise the concept of single member companies by the Department of Business Development in order to facilitate the current trend of business and reduce the problem of nominees by the legislation of a new specific Act. The provisions under the draft law relevant to creditors' rights and protections in single member companies will be considered in the next section.

4.2 Creditors' Rights and Protection in Single Member Companies under the Draft Law on Single Member Companies Act B.E…

4.2.1 Members' Qualifications

Several qualifications and prohibitions are imposed on the member of a single member company in this Act. The member of such a company must be a Thai

[186] ibid 26
[187] CCC s. 1012
[188] CCC s. 1097
[189] Legal and Development Research Institute of Chulalongkorn University (n 182) 26

national, who invests in cash or by assets. Someone who has been convicted of a crime, been bankrupt, or is quasi-incompetent or incompetent cannot establish a single member company. Besides, someone who has a bad record of behaviour, i.e. has been convicted and imprisoned for fraud, cheating creditors, misappropriation, trade-related offences under the Thai Penal Code or offences related to a loan, which is deemed as cheating and defrauding the public shall be prohibited from incorporating a single member company unless he has been acquitted for not less than five years. Besides, each trader is only able to establish one single member company unless otherwise stipulated. [190] Anyone who assists, supports or participates in the control of a company by claiming that it is his exclusive business, or invests on behalf of foreigners for the purpose of avoiding the foreign business law, including consenting to another person's conduct, shall be liable for fine or imprisonment under s. 47 of the draft law.

There are various grounds for dissolution under the Act, some of which depend on the existence and status of the member, i.e. the death of the member unless it is devolved to the heirs and the member becomes bankrupt or incompetent.[191] Subsequently, if the member has not appointed any person to be the liquidator, he will become the liquidator during the course of the liquidation himself.[192] The process of liquidation should conform to the CCC unless the company is dissolved due to bankruptcy, as long as it is not in conflict with this Draft law.[193]

Moreover, in the event of restructuring into a multi-member company under the CCC, the company must announce it in the local newspaper and notify the company's creditors in writing. The creditors are entitled to object to the restructuring within 30 days of the notification. If there is an objection by a creditor, the company shall not be restructured unless the debt is repaid or security is given for it.[194] The specific grounds for the dissolution and the procedure of restructuring a single member company reflect the underlying idea that the existence of a sole member is a significant fact under this draft law.

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[190] The Draft Law on Single Member Companies Act B.E...., s. 3, 9 and 11
[191] The Draft Law on Single Member Companies Act B.E...., s. 38
[192] The Draft Law on Single Member Companies Act B.E...., s. 39
[193] The Draft Law on Single Member Companies Act B.E...., s. 42
[194] The Draft Law on Single Member Companies Act B.E...., s. 33

4.2.2 Directors' Qualifications

The member himself or another person appointed by the member, who is also a Thai resident, shall hold the position of director. Similar to members, anyone who has been convicted of a crime, bankrupt, quasi-incompetent or incompetent cannot hold this office. However, the law imposes a stricter prohibition regarding a record of bad behaviour. Firstly, a director shall not have been convicted or imprisoned for an offence related to dishonest conduct on property unless he has been acquitted for not less than five years. Secondly, a director shall not have been fired or dismissed from government agencies due to an offence related to corruption in the conduct of his duty. Finally, unless he has been acquitted for not less than five years, a director shall not have been found guilty of an offence related to assisting, supporting or participating in the control of the company by claiming that it is his exclusive business, or investing on behalf of foreigners for the purpose of avoiding the foreign business law, including consenting to another person's conduct.[195]

4.2.3 Approval of Significant Transactions

The following important transactions must be approved by the member in writing:

(1) The sale, lease, exchange, disposal, payment or transfer by any methods of assets valued at more than half the total amount of the company or as stipulated by the Article of Association which is not the ordinary course of business;

(2) The increase and reduction of capital;

(3) Other conduct rather than the ordinary course of business;

(4) The amendment of the Articles of Association.[196]

[195] The Draft Law on Single Member Companies Act B.E...., s. 17
[196] The Draft Law on Single Member Companies Act B.E...., s. 21

4.2.4 Share Capital

Under Thai jurisdiction, the final report[197] proposes two alternative types of single member companies. The first is a company that has share capital where the contribution of capital may be divided into shares. The sole member shall subscribe the whole shares and be liable for the payment of the share price.[198] In the second type, the contribution may not be divided into shares; however, the sole member will specify the amount contributed to the company and his liabilities shall be limited to this amount.[199] Finally, it appears that single member companies have no share capital under the current Thai draft law. The amount of registered capital shall be declared in the list of incorporation and the member shall be liable for the full contribution.[200] Nevertheless, it has to be noted that the current draft law does not impose the minimum amount of the first payment, which is different from the CCC.[201]

The member shall be liable for the equivalent to the amount contributed to the company and has the duty to fully pay up the registered capital.[202] Based on the definition in the current draft law, the member is the person who contributes money or assets to the company, which implies that the member cannot contribute by labour.[203] Besides, the assets contributed to the company must be appropriately appraised; otherwise, the person who dishonestly appraises the value of the assets higher than it should be shall be liable for a fine.[204]

4.2.5 Capital Maintenance

4.2.5.1 Reduction of Capital

Under the draft law, the capital shall not be reduced to less than a quarter of the total amount of the registered capital. Before reducing the capital, the

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[197] Legal and Development Research Institute of Chulalongkorn University (n 182)
[198] ibid 154-155
[199] ibid 145
[200] The Draft Law on Single Member Companies Act B.E...., s. 10, 12
[201] CCC s. 1105 paragraph 3
[202] The Draft Law on Single Member Companies Act B.E...., s. 10
[203] The Draft Law on Single Member Companies Act B.E...., s. 3
[204] The Draft Law on Single Member Companies Act B.E...., s. 62

company shall announce its decision in the newspaper and also notify the company's creditors that they can make an objection within 14 days. In the event that there is an objection by a creditor, the company shall not reduce its capital unless it repays the debt or gives security for it.[205] If the directors fail to comply with these duties, they shall be liable for the payment of a fine based on s. 54 of the draft law.

Moreover, said decision to reduce the capital must be registered with the registrar within 14 days after being approved by the member. If the company does not comply with this duty, it shall be liable for a fine as appears in s. 54 of the draft law.

4.2.5.2 Distribution of Dividend

The distribution of the dividend shall be made from the profits at the director's discretion. The distribution is prohibited if there is a realised los. The director shall be the person who makes a decision to distribute the dividend to the member.[206] Moreover, before the distribution of the dividend, the company also has to allocate not less than five percent of the total annual profit to a reserve fund until this reserve fund reaches ten percent of the total amount of registered capital or more, as otherwise stipulated by the Articles of Association or the law.[207] Failure to comply with these duties amounts to the exploitation of creditors' rights; creditors are entitled to file a claim for repayment of the paid dividend within one year from the day of acknowledgment by the creditors or ten years from the day of the distribution of the dividend.[208] Moreover, the company shall be liable for a fine for unlawful distribution based on s. 52 of the draft law.

4.2.6 Mandatory Disclosure

4.2.6.1 Registration and Declaration of Companies' Information

Under the draft law, the company shall use the name which consists of "… company limited (sole member)" and show this name in the company's

[205] The Draft Law on Single Member Companies Act B.E...., s. 32
[206] The Draft Law on Single Member Companies Act B.E...., s. 28
[207] The Draft Law on Single Member Companies Act B.E...., s. 29
[208] The Draft Law on Single Member Companies Act B.E...., s. 30

documents, company seal and at the office.[209] Moreover, the company shall register the new branch before conducting business in the said branch.[210] If the company does not conform to these duties, it shall be liable for a fine based on s. 48 of the draft law.

The list of incorporation shall consist of the company's name, address, contact information, registered capital, information of the member and director, the date of the dissolution of the company, regulations of the management of the business, i.e. objectives, director's power and Articles of Association and other regulations. The Articles of Association shall consist of information regarding the appointment of directors, dividend and reserve fund, accounts, audit and any conduct required prior to approval by the member. If there is any change to this list of incorporation or Articles of Association, the director shall register the change within the stipulated period.[211] If the company does not conform to these duties, the director shall be liable for a fine penalty under s. 49 of the draft law. Moreover, unless it has already been registered, the member or company shall not claim any statement required to be registered against a third person. Besides, any person is entitled to access the information registered with the registrar, which reflects the rule of disclosure of information.[212]

4.2.6.2 Accounts, Reports and Audit

The director himself or a person appointed by the director shall prepare the company's accounts in order to submit the balance sheet to the member for approval each year. The director shall keep the account and balance sheet for the member and the registrar in order to disclose them to the public for five years.[213] If the person who prepared the accounts fails to comply with these duties, he shall be liable for a fine based on s. 50 of the draft law.

The company shall prepare accounts in accordance with the accounting law for each financial year. The balance sheet shall consist of the information required by the law. Unless otherwise stipulated, the balance sheet shall

[209] The Draft Law on Single Member Companies Act B.E...., s. 7
[210] The Draft Law on Single Member Companies Act B.E...., s. 14
[211] The Draft Law on Single Member Companies Act B.E...., s. 12, 13
[212] The Draft Law on Single Member Companies Act B.E...., s. 6
[213] The Draft Law on Single Member Companies Act B.E...., s. 23

be examined by the auditor and it shall also be submitted to the registrar in accordance with the law.[214]

If the person who has the duty to prepare the accounts fails to comply with these duties, he shall be liable for a fine based on s. 51 of the draft law. Moreover, a director or liquidator who dishonestly provides false information or conceals the truth regarding the financial status of the company which should have been notified to the member shall be liable for a fine based on s. 55 of the draft law.

4.2.7 Controllers' Specific Duties and Liabilities

The draft law simply provides that directors' conduct shall comply with the duty of loyalty and the duty of care for the purpose of maximising the interests of the company.[215] Directors do not generally owe any duty apart from considering the other stakeholders' interest. However, some controllers of the company, such as directors or officers, may be liable for specific criminal offences under this draft law as shown below.

4.2.7.1 Defraud of Creditors

Pursuant to s. 57 of the draft law, any person who is responsible for the management of a business knowing that the company or the other person's creditors will exercise a claim to enforce the repayment of debt from the company could be liable for a fine or imprisonment if the said person moves, conceals or disposes of the company's assets to another person or dishonestly causes the company to become indebted for the purpose of preventing the repayment of debt to the creditors.

4.2.7.2 Exploitation of Companies' Benefit

Another liability is that anyone who is responsible for the management of the business manages it for the purpose of unlawfully exploiting another person for his own benefit or causes damage to the company shall be liable for a fine based on s. 58 of the draft law. Moreover, if he damages, destroys, changes,

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[214] The Draft Law on Single Member Companies Act B.E...., s. 24
[215] The Draft Law on Single Member Companies Act B.E...., s. 22

deletes or makes false accounts, documents or securities or makes a false statement or does not record important statements in the account or documents, including consenting to the aforementioned conduct for the purpose of exploiting the benefit of the company or the member, he shall be liable for imprisonment or a fine based on s. 59 of the daft law.

4.2.7.3 Defraud of Guarantor or Mortgagee

Any person who refers a false statement or conceals the fact regarding a person, account, report or business of the company for the purpose of the exploitation of interest from the interested party or inducement of a person to deliver assets, become a guarantor or give security to the company shall be liable for imprisonment or a fine based on s. 61 of the draft law.

Besides, if any person who is responsible for the management of the business takes, damages, destroys, causes the depreciation of value or renders useless the property mortgaged by the company for the purpose of causing damage to the mortgagee, he shall be liable under s. 56 of the draft law.

Finally, in the event that the company is found guilty under this draft law, the director or representative of the company who has known about the said conduct or has not attempted to prevent the said offence shall also be liable under s. 63 of the draft law.

4.2.8 Creditors' Right to Exercise Debtor's Claims

In an event where the debtor owes a repayment of a debt to the company, the creditor may claim for repayment of the debt on behalf of himself.[216] The consequence of this right is that it will increase the total amount of the company's assets that are enforceable by creditors for the repayment of the debt.

[216] The Draft Law on Single Member Companies Act B.E...., s. 22

4.3 Creditors' Rights and Protections under Bankruptcy Act B.E. 2483

In the course of insolvency, both natural person and juristic person are answerable to the same law, i.e. the Bankruptcy Act B.E. 2483. Different from the UK Insolvency law, the procedure under the Thai bankruptcy law can be divided into two significant procedures, the first of which is the general bankruptcy procedure and the second is the reorganisation of an insolvent business, which appears in Chapter 3/1. Moreover, a new mechanism has recently been introduced into Thai law in Chapter 3/2 called the reorganisation for small and medium enterprise debtors.

Apart from involuntary bankruptcy, Thai jurisdiction also recognises voluntary bankruptcy for juristic persons. The debtor with the status as an ordinary partnership, a limited partnership, a limited company or any other juristic person may voluntarily become bankrupt on the liquidator's request when full payment of the contribution or the amount of shares has been made and there are insufficient assets to repay the debt.[217] Parallel to the CCC s. 1266, it is stipulated that the liquidator must file a petition of bankruptcy to the court when the full payment of the contribution or assets are insufficient to repay the debt.[218] Creditors may file a petition to give an order to an unlimited liability partner to become bankrupt.[219] However, single member company's creditors shall not be entitled to this right because the member of a single member company has a limited liability against the company's debt.

Another interesting issue relates to the criteria of the amount of minimum debt to initiate a bankruptcy case under s. 9 of the Bankruptcy Act. In cases where the debtor is a natural person, the amount of the debt shall not be less than THB 1million; however, for a juristic person, it must not be less than THB two million. This implies that, having recognised the concept of a single member company, debtors may establish such a company in order to prevent creditors from initiating a bankruptcy case.[220]

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[217] The Bankruptcy Act B.E. 2483, s. 88

[218] Vicha Mahakun, *Bankruptcy and Reorganisation of Debtors' Businesses Law* (13th edn, nitibankan 2010) 192-193

[219] The Bankruptcy Act B.E. 2483, s. 89

[220] Noppadon Pakornnimiddee, *the Advantages and Disadvantages of the Formation of a One-Man Company in Thailand* (School of Law, Sripatum University 2016) 49

The Bankruptcy Act B.E. 2483 contains provisions regarding the cancellation of vulnerable transactions which could enhance creditors' rights and protection in single member companies as explained below.

4.3.1 Cancellation of Fraudulent Acts

The cancellation of fraudulent acts is generally stipulated in the CCC s. 237. This refers to juristic acts that are intentionally conducted in order to prejudice creditors. Creditors shall file a case for the court's order to avoid the said act within one year from the acknowledgement of the conduct or within 10 years after engaging in such a transaction. Notwithstanding, the juristic act is irrevocable if the other party, who also gives a remuneration, has no knowledge of such exploitation. This provision shall be applied regardless of whether the debtor becomes bankrupt or not.

When the company becomes bankrupt, the same claim shall be initiated by the receiver.[221] A juristic act conducted within one year prior or after the initiation of the bankruptcy case or constitutes a smaller remuneration than it should have been shall be presumed to be fraudulent act.[222]

Similarly, in the reorganisation procedure, the court may cancel the fraudulent acts on the application of a planner, a plan administrator and a receiver.[223] However, this remedy does not exist in the reorganisation of small and medium enterprises under chapter 3/2 of The Bankruptcy Act.

4.3.2 Cancellation of Transfer or Act

S. 115 and 116 of the Bankruptcy Act attempt to give all creditors equal protection. The transfer of property or any action that intentionally enables any creditor to take advantage of the others within three months before or after the adjudication of bankruptcy shall be cancelled by the court on the application of the receiver. The duration is extended to one year in the event that the other party is a

[221] The Bankruptcy Act B.E. 2483, s. 113
[222] The Bankruptcy Act B.E. 2483, s. 114
[223] The Bankruptcy Act B.E. 2483, s. 90/40

debtor's insider. However, an exception for a third party also appears in s. 116 that it shall not affect the third person who has acquired the rights in good faith and has paid a remuneration before the adjudication of bankruptcy.

Moreover, according to s. 115, avoidance causes damage to creditors; therefore, the said creditors are entitled to demand damages based on s. 92 of the same Act.

As mentioned above, parallel to s. 115, the transfer of assets for the purpose of giving preference to a particular creditor shall also be revocable in the process of reorganisation.[224] However, it should be noted that there is no similar provision for the reorganisation of small and medium enterprises under chapter 3/2.

4.4 Analysis of Creditors' Rights and Protections in Single member Companies

Several interesting similarities and differences can be found in terms of creditors' rights and protections in single member companies when comparing the Thai and UK company and corporate insolvency law, and these are discussed below.

4.4.1 Members' Qualifications

The UK law simply imposes the same regulations regarding the existence and management of other types of business organisation to single member companies so long as they are not in conflict with the characteristic of having a sole member.[225] A sole trader may establish a company under the CA 2006 like any other traders.[226] There is no specific prohibition regarding the member's qualifications. The member could be any natural or juristic person and he could establish several single member companies for each business.

Under the Thai draft law, unless stipulated otherwise, each person shall only establish one single member company.[227] This rule reflects the concern regarding

[224] The Bankruptcy Act B.E. 2483, s. 90/41
[225] CA s. 38
[226] CA s. 7
[227] The Draft Law on Single Member Companies Act B.E...., s. 9

creditors' rights and protections in single member companies under the draft law. The underlying idea is that. If one person was allowed to establish several single member limited companies, he may undercapitalise each company so that the creditors of each company would have a very limited claim in the event that the company defaulted on its debts. In fact, Member States are also allowed to enact this kind of regulation under the EU Directives,[228] but it is questionable whether it is necessary to impose this prohibition. If a sole trader has several businesses and has contributed sufficient funds to each of them, he may desire to separate each business for management purposes. However, since he cannot establish more than one single member company, he will eventually have to incorporate a multi-member company based on the CCC. From my perspective, only allowing each sole trader to establish one single member company is not an effective mechanism to solve problems such as undercapitalisation or the defrauding of creditors.

Another issue is that the draft law imposes various qualifications on members, which are similar to those for the incorporators of public limited companies under Public Companies Act B.E. 2535. The member must be a Thai natural person who has full competence and has not been convicted of bankruptcy or found guilty of any criminal offences related to fraud.[229] These qualifications obviously reflect the concern regarding creditors' rights and protection in single member companies. Since the shares of public companies are traded publicly and the conduct of public companies could widely affect several relevant stakeholders, there are justifiable reasons to impose these restrictive qualifications on incorporators of these companies. However, single member companies are normally closely-held companies and their conduct usually only affects a few relevant parties. Therefore, some conditions may be inconsistent with the characteristic of single member companies as explained below.

Firstly, the prohibition of incorporation by juristic persons under this law will obstruct the business model of wholly-owned subsidiaries, i.e. in situations where parent companies establish several subsidiaries for each business. The underlying idea of this prohibition is that each single member company established may have very

[228] Article 2 of Directive 2009/102/EC
[229] The Draft Law on Single Member Companies Act B.E...., s. 3 and 11

limit liability against creditors. It may be undercapitalised in order to limit their liability for each business or used as a shield to protect the parent company from liability and creditors will eventually be unable to enforce the repayment of debt. In fact, although this regulation does not exist in UK law, the EU Directives allow Member States to enact it.[230] From my perspective, prohibiting the incorporation of single member companies as subsidiaries cannot effectively prevent the problem of defrauding creditors or undercapitalisation. In fact, this business model has several legitimate purposes; for example, to separate the management of each business and to acquire certain benefits or support from the government, which is common in the current business world; therefore, it could be said that this prohibition will not reflect and facilitate the current trend of business. Even though subsidiaries are prohibited under this draft law, they will eventually be able to be established under the CCC. Therefore, this prohibition seems to be unnecessarily restrictive in the protection of creditors.[231]

Secondly, when considering the issue of members' capacity, based on concern that the stability of the company will rely solely on the sole member and it could easily be used as a vehicle to perform dishonest activities for the purpose of defrauding creditors, incompetent and quasi-incompetent persons are prohibited from incorporating single member companies under the draft law. From my perspective, the conduct of these persons has already been limited by the existing rules. Any act that has been committed by the incompetent person is deemed voidable under s. 29 of the CCC. Some acts of quasi-incompetent persons as stipulated under s. 34 of the CCC, such as investing in property, are also prohibited without the consent of the curator. Therefore, it may be unnecessary to emphasise these limitations in this draft law.

Thirdly, since Thai draft law focuses on the specific qualifications of sole members, a person who has been convicted of certain offences related to fraud is prohibited from establishing a single member company. Only persons who have a record of good behaviour are allowed to establish this kind of company under this

[230] Article 2 of Directive 2009/102/EC
[231] Legal and Development Research Institute of Chulalongkorn University (n 182) 118-119

draft law. This prohibition neither exists in the UK law nor the CCC. This condition obviously reflects the concern that there is a high potential that single member companies would be established for fraudulent purposes. Therefore, this is an attempt to prevent a person who has been found guilty of financial misconduct to operate a business with this type of corporate form.

Lastly, there is an interesting issue based on the question of whether a person who is placed under receivership should also be prohibited from establishing a company under this draft law. This person is restricted from any conduct regarding his property and the receiver shall be exclusively entitled to manage the debtor's assets.[232] There is also a sufficient fact that this person is insolvent and owes a certain amount of debt, which should be an appropriate ground to restrict him from establishing single member companies. Therefore, the prohibition should not be limited to a bankrupt person, but should be extended to include persons who have been placed under receivership.

Nevertheless, it should be noted that, since these regulations do not exist in the CCC, the prohibited persons under this draft law will eventually be able to incorporate a multi-member company under the CCC. Consequently, creditors' rights could be exploited by these misbehaving persons.

4.4.2 Change of Members

Single member companies are treated like multi-member companies in UK law. The existence of these companies does not rely on a sole member. Their shares are transferable in accordance with the company's Articles.[233] In the event of the death of the sole member, the heir shall be responsible for both rights and duties in accordance with the law of succession.[234] Besides, single member companies can only

[232] The Bankruptcy Act B.E. 2483, s. 19 and 22
[233] CA s. 544(1)
[234] Legal and Development Research Institute of Chulalongkorn University (n 182) 143

be transformed into multi-member companies by being entered in the register of company members.[235]

Different from UK law, the Thai draft law places importance on the specific qualification of the particular sole member. Since the existence of companies relies on the sole member, creditors are deemed to be affected in the event that there is a change of member. Three possible scenarios are discussed below.

4.4.2.1 Transformation of Single member Companies into Multi-member Companies under the CCC

Under the Thai draft law, a company can restructure its investment by seeking other investors to meet the minimum requirement of the incorporation of limited companies (three shareholders under the current CCC). The new member may be less trustworthy or have a different management policy, which could affect the creditors' rights. Therefore, this provision imposes the duty on the company to notify the creditors before the transformation and creditors are entitled to object to it. In the event of an objection, the company shall not be restructured unless the debt is repaid or some security is given. Creditors are appropriately protected from the risk of the company's restructuring by virtue of this provision.[236] This is the only situation regarding the change of members that appears in the draft law, but in fact, there are several situations in which the structure of the company is changed, which could also affect the creditors, as explained below.

4.4.2.2 Transfer of Company by Intention

In a situation in which the member transfers the company to a new trader; for instance Mr A sells Company A to Mr B, Mr B becomes a new member and shall be liable for unpaid contributions. This approach could be called the transfer by intention of the parties, i.e. the transferor and the transferee.

The first question is whether the member can transfer the company, since there is no explicit provision on the transfer of single member companies to a new trader under the current Thai draft law. Two relevant provisions that can answer this question are discussed below.

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[235] CA s. 123

[236] The Draft Law on Single Member Companies Act B.E...., s. 33

Firstly, shares are transferable regardless of the company's consent under the CCC unless otherwise stipulated. For those shares entered in a named certificate, the transfer of shares shall be made in writing and signed by the transferor and the transferee whose signatures shall be certified by at least one witness. Failure to comply with this procedure leads to the transfer being voided. Unless the fact of the transfer is entered in the register of shareholders, it is invalid against the company and third persons.[237] This means that the transfer of shares under the CCC is a formality.

Secondly, since the Thai draft law seems to emphasise the qualifications of the member, the change of member seems to be an important factor of a single member company. It is clearly indicated under the draft law proposed in the final report (revised in accordance with the public hearing)[238] that the shares of single member companies are transferable. There is a requirement to register the transfer to the share register and the transferor shall be liable for the unpaid share price no longer than two years after the registration. Besides, based on the same report in the proposed draft law, even though single member companies have no share capital, there is also an explicit provision that the sale of a single member company must comply with the regulations and procedures stipulated by the authority.[239] These proposed provisions show that, if the transfer is allowed, there must be an explicit provision on this matter. Thus, it may be concluded that a single member company cannot be transferred to another investor under the current draft law.

The next question is whether it is appropriate to prohibit the transfer of the whole share to a new investor and there are two different opinions on this issue. Firstly, if the transfer is prohibited, it will cause problems in the growth of the business. Similar to sole proprietors, sole members of single member companies should be able to freely sell the company to another trader. However, since the change of member inevitably affects the creditors' position; the law should impose the procedure of the transfer of single member companies; for instance, the transfer

[237] CCC s. 1129
[238] Legal and Development Research Institute of Chulalongkorn University (n 182) 173
[239] ibid 149

should be made in writing and registered in the members' register in order to publicise this change. [240]

On the other hand, the change of member can affect the creditors' position because there is a close bond between the sole member and his single member company. The qualifications of the members are an important factor in single member companies. Presuming that the transfer was allowed even though the company debtor was the same person, the member who was liable for the contribution to the company would have totally changed. The member may transfer the share in order to evade his obligations. Creditors who engage in transactions with single member companies may not be able to rely on the new member as much as the former one. The new member may have insufficient funds to pay the unpaid contribution or he may change the management of the business, which could affect the creditors' interest. Therefore, the transfer of company by intention should not be allowed based on protecting creditors' interests. From my point of view, it is reasonable to prohibit the transfer of company by intention.

4.4.2.3 Transfer of Company by Law

Under the CCC, companies shall not be wound up in the event of the death, incapacity or bankruptcy of members because the qualification of the member is not deemed to be important for the existence of the company. Shares can be transferred by law in some events, such as death, bankruptcy or auction.[241] Different from the CCC, there are several grounds for the winding up of single member companies under Thai draft law, i.e. the death, bankruptcy or incapacity of the member, which is similar to the case of unlimited partnerships.[242] In these scenarios, the company shall be liquidated, any juristic relationship will be terminated and the creditors will be repaid proportionately.

Nevertheless, if the heir intends to keep operating the business in the event of the death of the member, the company could be devolved to the heir in

[240] Legal and Development Research Institute of Chulalongkorn University (n 182) 95 -96
[241] CCC s. 1132
[242] The Draft Law on Single Member Companies Act B.E..., s. 38(1)-(2); CCC s. 1055

accordance with the CCC.[243] The question is whether the creditors will be affected because of the change of member. On the one hand, allowing the heir to continue the business will enhance its consistency. Since the death of a member is anticipated in every company, there should be appropriate statutory rules on this event.[244] If the succession by the heir is allowed, the draft law should impose a procedure and formality on the transfer of the company in order to disclose it to third persons. On the other hand, the qualification of a particular member is a significant fact of a single member company. Similar to the transfer by intention, this change will inevitably affect the creditors' position. Therefore, from my view, the transfer of company by law should not be allowed.

4.4.3 Directors' Qualifications

Under UK law, each company must have at least one director who is a natural person[245] and there is a minimum age for appointment as a director.[246] Moreover, under the CDDA, the court may disqualify a person from holding the office of director, liquidator, administrator, receiver or manager of the company or from participating in the company.[247] There are several grounds to disqualify directors and other relevant persons under this Act; for instance, on conviction for an indictable offence, persistent breach of companies legislation, fraudulent trading and unfitness management.

Under Thai draft law, directors must have full competence and not have been convicted of bankruptcy, which is a concept similar to that in s. 1154 of the CCC. Also, due to the general measure to prohibit a person from engaging in an occupation or profession that appears in the Thai Penal Code s. 50, it could also apply to a director who exhibits opportunistic behaviour. In cases where the director is

[243] The Draft Law on Single Member Companies Act B.E...., s. 38(1)
[244] F Philip Manns JR & Timothy M Todd, 'Issues arising upon the death of the sole member of a single member LLC', 725 <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article= 5288&context=mulr> accessed 27 July 2017
[245] CA s. 155
[246] CA s. 157
[247] CDDA s. 1

convicted and found guilty, if the court foresees that he could commit the said dishonest activity again, it may issue an order to prohibit the director from holding this office for a period of not more than five years.[248] Moreover, there are special directors' qualifications under this draft law. The director must be a Thai resident and parallel to the members' qualifications, the director must also not have been convicted or found guilty of certain offences related to fraud.[249] Directors are the persons who have the duty to manage the company's day-to-day business; therefore, their conduct could not only affect the members, but also other relevant persons. The laws in both jurisdictions generally impose several similar directors' qualifications and prohibit disqualified persons from holding the office of director. Notwithstanding, considering the criteria for disqualification under the CDDA, it seems to be more inclusive than the Thai law because directors can be disqualified on several grounds, regardless of conviction or guilt. Different from the draft law and the Penal Code under Thai law, the person who is prohibited must have been convicted and found guilty by the court. Thus, it could be said that the UK law is more restrictive than Thai law in terms of directors' qualifications.

4.4.4 Directors' Specific Duties

Since directors are the persons who are responsible for the management of the business, they owe several duties to many categories of stakeholders. Under UK law, directors generally have the duty to promote the success of the company for the interests of members and stakeholders, but these duties are subject to the interests of the company's creditors.[250] This provision explicitly emphasises directors' duties to creditors, which do not exist in the Thai jurisdiction. Based on this provision, the other specific law that imposes directors' duties to creditors is the insolvency law. When a company becomes insolvent or even doubtfully insolvent, the directors shall put the creditors' interests over all other interests because their interests are adversely

[248] Wuthiphong Wongsrikeaw, *Liabilities of Managing Director in Case of the Bankruptcy of Company* (Faculty of Law, Thammasat University 2006) 78-79
[249] The Draft Law on Single Member Companies Act B.E...., s. 17
[250] CA s. 172

affected in this situation. Directors, including other officers, may be penalised for malpractice in the course of winding up in accordance with the IA 1986, Chapter X. Delinquent directors or other relevant officers may be compelled to contribute a sum as compensation to the company.[251] Any person who operates the business to defraud the creditors shall be liable to make a contribution to the company and also be charged with a criminal offence.[252] Besides, the directors could be liable for making a contribution to the company for wrongful trading in the event that there is no prospect of avoiding insolvent liquidation.[253] These provisions on fraudulent and wrongful trading directly impose liability on the persons operating the business of the company, such as directors, in the event of insolvency liquidation in order to prohibit them from incurring further debt which could affect the creditors' position and compensation to the company's assets.[254] In fact, these provisions are also deemed to be statutory, regardless of the corporate personality. Directors shall not generally be personally liable for the company's debt; however, the court shall order these persons to make a contribution to the company's debt by virtue of these provisions.

In terms of the laws under Thai jurisdiction, there is no specific provision imposing any duties that directors owe to creditors, but they owe a general duty to the company under the CCC. They must conduct the business with the diligence of a careful businessman and not engage in any business of the same nature as the company or that competes with the company.[255] Parallel to the CCC, the directors of a company under the draft law also owe the duty of loyalty and the duty of care in order to maximise the company's benefit.[256] The interesting issue is whether or not there is a similar mechanism that imposes liability against creditors on directors for fraudulent or wrongful trading under Thai jurisdiction and the relevant provisions in this respect are considered below.

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[251] IA s. 212
[252] IA s. 213, CA s. 993
[253] IA s. 214
[254] Hicks G & S.H. Goo, *Cases and Materials on Company Law* (6th edn 2008, Oxford University Press) 629
[255] CCC s. 1168
[256] The Draft Law on Single Member Companies Act B.E...., s. 22 paragraph 1 and 2

Under the CCC, if a director causes damage to the company, he may be sued for compensation by the company or shareholders and this is called a derivative claim. This right is also extended to the company's creditors who have the remaining claim against the company.[257] However, liability of director under this provision of the CCC seem to be much more limited than the fraudulent and wrongful trading under UK law because under this provision the damage must have been caused by the directors' direct conduct. Moreover, creditors may exercise this right only in the event that the company neglects to file a claim and their rights shall be limited to not exceeding the remaining amount claimable. Furthermore, this right does not exist in the draft law; therefore, the creditors of single member companies cannot file a claim for damage caused by directors.

Other general approaches to impose liability on directors appear in the CCC. Firstly, tort law appears in s. 420 of the CCC. In this case, directors may be liable for compensation to creditors if the fact shows that they intentionally or negligently caused damage to the creditors. Besides, even though directors are liable under these provisions, they shall only directly compensate the aggrieved creditors for the actual damage. This is much more limited than the UK law where directors must be liable to make a contribution to the company based on the court's discretion.[258] Secondly, the principle of good faith, which appears in s. 5 of the CCC, could also be applicable. However, it may not be effective because it is uncertain and depends on discretion case by case. Also, there must be a dispute before it is imposed.[259]

Nevertheless, some criminal liabilities against directors or controllers of the company appear in the draft law. Directors or liquidators who conceal the fact regarding the company's financial status from the owner shall be liable.[260] The person who is responsible for the management of the business such as the director shall be liable for causing damage against the mortgagee,[261] certain misconduct to defraud creditors,[262] the exploitation of benefits from the company or the member,[263] causing

[257] CCC s. 1169
[258] ibid 85
[259] ibid 95
[260] The Draft Law on Single Member Companies Act B.E...., s. 55
[261] The Draft Law on Single Member Companies Act B.E...., s. 56
[262] The Draft Law on Single Member Companies Act B.E...., s. 57

damage to the company or the member,[264] and defrauding the guarantor or mortgagee.[265] In the event that the member of a single member company is convicted and found guilty, the directors who knew about the said conduct or failed to prevent it shall also be liable.[266] Moreover, the general offences related to fraud and cheating under the Penal Code could also be applicable. However, these criminal offences are quite difficult to prove in practice because creditors shall bear the burden of proving that the directors had initially intended to defraud them.[267] Even though these criminal liabilities reflect the directors' liabilities against creditors' rights and protection in a single member company, no civil penalty is imposed on directors like the mechanisms of fraudulent and wrongful trading under UK law.

When comparing the above-mentioned mechanisms under the Thai jurisdiction with those under the UK law, the provisions on fraudulent and wrongful trading under the IA 1986 are much more inclusive because the existing provisions under Thai law fail to apply in several situations that are detrimental to creditors' rights. Under Thai law, directors shall not be liable for any damage occurred due to risky management. Moreover, Thai law does not impose liability on directors who conduct business activities after they had realised that the company could not avoid insolvent liquidation. Even though the directors know said fact, they have no duty to inform creditors of the company's poor financial status. Discovering this is deemed to be the creditors' responsibility.[268] Therefore, there is an academic opinion that Thai law should recognise these principles in order to promote creditors' rights and protections.[269] Furthermore, since a single member company is normally managed by a sole member, the provisions on fraudulent and wrongful trading will provide the appropriate measures to prevent potential damage from being caused by the members.

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[263] The Draft Law on Single Member Companies Act B.E...., s. 58
[264] The Draft Law on Single Member Companies Act B.E...., s. 59
[265] The Draft Law on Single Member Companies Act B.E...., s. 61
[266] The Draft Law on Single Member Companies Act B.E...., s. 63
[267] Wuthiphong Wongsrikeaw, *Liabilities of Managing Director in Case of the Bankruptcy of Company* (Faculty of Law, Thammasat University 2006) 84
[268] ibid 102
[269] ibid (3)-(4)

4.4.5 Disregard of Corporate Entity

Under UK jurisdiction, there have been some cases of single member companies to which the concept of piercing the corporate veil was applied; for example, the company was initially established for fraudulent purposes, was under-capitalised or the assets had been disposed of so that nothing was left to repay the debt to creditors.[270] In these cases, the court shall use its discretion to decide whether to pierce the corporate veil in order to make members personally liable for company's debt. Although this principle is not specifically imposed on a single member company, there is more potential that the doctrine of piercing the corporate veil shall be applied to a single member company on court's discretion due to the characteristic that it is absolutely controlled by a sole person who could easily be found guilty of misconduct.

This principle is not explicitly recognised under Thai jurisdiction, as a result of which there is an academic suggestion that the court may analogise the existing relevant law, such as s. 5 of the CCC: the principle of good faith, equity law or principal – agent relationship to apply for the sake of justice in some cases.[271]

When considering the existing cases under Thai jurisdiction, there are only a few cases that reflect the disregard of the corporate personality. In fact, the Thai court generally refuses to apply this principle.[272] To illustrate this point, according to Supreme Court judgment no. 5645/2546, the plaintiff and defendant 1 had previously purchased land together. Afterwards, Defendant 1 and others incorporated a company (Defendant 3) with bad faith for the purpose of holding the title of the purchased land for defendant 1 and operating any business related to the said land. The court held that Defendant 3 had a separate legal personality from its shareholders, i.e. Defendant 1. Therefore, Defendant 3 was not party to the previous contract between Defendant 1 and the plaintiff so that Defendant 3 was not liable for

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[270] Legal and Development Research Institute of Chulalongkorn University (n 182) 30

[271] Sophon Ratanakorn, *Civil and Commercial Code: Partnerships and Companies* (12th edn, nitibankan 2010)

[272] Pichai Ponpai, 'Whether Thai Court Recognises the Principle of Piercing the Corporate Veil?', *Parithas Court of Justice Journal* <http://elib.coj.go.th/Article /50_8_3.pdf> accessed 18 May 2017

any obligation in the said contract.[273] This judgment reflects the strict interpretation of the principle of separate legal personality. Although the fact in this case showed that the company had been established in bad faith by the shareholder, the court still insisted on the principle of separate legal personality, which eventually affected the interests of the creditors.

This principle specifically appears in s. 44 of the Consumer Protection Act, in which the court may order shareholders and other controllers such as directors to be liable for the company's debt against consumers. However, no general rule exists in Thai law. Even though Thai law also recognises the disregard of a corporate personality and there have been some cases in which the court applied the principle of lifting the corporate veil, this concept seems to have been applied less explicitly compared to the UK jurisdiction. Therefore, to recognise the concept of single member companies under Thai jurisdiction, the Thai court may exercise its power to disregard the corporate personality in cases in which they are found that single member companies have been formed for dishonest purposes.

4.4.6 Share Capital

The Thai draft law emphasises the duty of the member to fully pay up his contribution to the company.[274] The payment of capital by the asset should be appraised accurately.[275] However, it does not indicate the minimum requirement of the initial amount of payment as appears in the CCC s. 1105 paragraph 3. An inclusive procedure for the payment of a company's share capital is imposed for all types of enterprises under part 17 of the CA 2006 of UK law. It could be said that the member of a single member company in both jurisdictions shall generally have the duty to pay a contribution to the company.

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[273]Noppadon Pakornnimiddee, *the Advantages and Disadvantages of the Formation of a One-Man Company in Thailand* (School of Law, Sripatum University 2016) 52

[274] The Draft Law on Single Member Companies Act B.E...., s. 10; CCC s. 1119

[275] The Draft Law on Single Member Companies Act B.E...., s. 3, 62; CCC s. 1108 (5); the Offence relating to Registered Partnership, Limited Company, Association and Foundation Act B.E. 2499, s. 48

The other issue related to creditor protection is the type of contribution to the company's assets. Under UK law, the member may contribute either money or something that is worth money to the company.[276] This means that labour can be appraised and contributed to the company's assets. Under the current Thai draft law, members may contribute to capital by either money or assets,[277] but they cannot contribute by labour, which is different from UK law and also the CCC.[278] This restriction is one of the provisions that reflects the concern about creditor protection. The underlying reason is that capital is a kind of security for creditors. It should be contributed by the thing that has an exact value in itself. It would be difficult to appraise the value of labour; therefore, if a contribution by labour was allowed, it is likely that single member companies would be undercapitalised in order to limit the liability of the member. In my opinion, this regulation seems to be inappropriate. Single member companies are designed to be suitable for small traders. In fact, it is common in today's business that these traders may not have any valuable asset to contribute to the company; however, they have a specialised skill or know-how to operate a business and earn an income. Therefore, they should be allowed to contribute by their labour.

4.4.7 Capital Maintenance

4.4.7.1 Minimum Capital Requirement

Since a company's capital is deemed to be a security for creditors, i.e. in the event of default, creditors will be able to claim the repayment of their debt from the company's capital contributed by the members; therefore, some jurisdictions specify the minimum capital requirement in single member companies based on concern that they could be undercapitalised. However, there is no such requirement for private limited companies in both UK and Thai law, since the appropriate amount of capital depends on each business. Thus, it is unreasonable for the law to specify a fixed amount of capital. From my perspective, the problem of undercapitalised

[276] CA s. 582(1)
[277] The Draft Law on Single Member Companies Act B.E...., s. 3
[278] CCC s. 1108(5)

companies should be prevented and solved effectively by another mechanism, i.e. the disregard of corporate personality. Therefore, Thai law has already imposed the appropriate regulation on this issue.

4.4.7.2 Reduction of Capital

The regulation regarding the reduction of capital is one of the approaches to maintain the capital of the company. Under the CA 2006, it should be agreed by a special resolution at the general meeting. However, there is an obvious approach in the UK law that this decision must be either supported by a solvency statement made by directors, which means that the directors could be liable for the unlawful reduction of capital[279] or confirmed by the court.[280] Under the Thai draft law, this decision can be made by the approval of the member, which is derived from the concept in the CCC.[281] However, the directors' solvency statement or confirmation by the court is not required, which implies that the UK law imposes stricter rules on this point than the Thai law.

Another issue is that creditors' rights are unavoidably affected by the reduction of capital because the expected amount claimable for the repayment of the debt will decrease. UK law provides creditors the right of objection[282] and the member or the company's officers could be liable for misconduct related to creditors' rights.[283] Under Thai draft law, the reduction of capital shall be notified to creditors for objection, which is derived from the concept in the CCC.[284] Nevertheless, it should be noted that, under the CCC, creditors who do not acknowledge the reduction of capital through no fault of their own may request that the debt be repaid from the refunded share price to shareholders within two years.[285] However, this concept does not appear in the draft law for single member companies. It could be said that both jurisdictions place importance on creditors' rights and protection in terms of the reduction of capital.

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[279] CA s. 643
[280] CA s. 641
[281] The Draft Law on Single Member Companies Act B.E...., s. 31; CCC s. 1220
[282] CA s. 646
[283] CA s. 652-653
[284] The Draft Law on Single Member Companies Act B.E...., s. 32; CCC s. 1226
[285] CCC s. 1227; Sophon Ratanakorn, *Civil and Commercial Code: Partnerships and Companies* (12th edn, nitibankan 2010) 484-485

Finally, similar to the CCC, the reduction of capital shall not be decreased to less than one quarter of the total amount of registered capital under the Thai draft law. This reflects the concern that registered capital is deemed to be security for the repayment of debt to creditors; consequently, it is not allowed to be substantially decreased. However, this provision does not exist in UK law.[286]

In summary, although the UK and Thai jurisdictions impose some different procedures in the reduction of capital, it reflects the same concern about creditors' rights being affected by the reduction of capital. Consequently both laws provide creditors the right of objection to the reduction of capital. However, creditors of single member companies are not entitled to claim for the amount refunded to members in the reduction of capital.

4.4.7.3 Distribution of Dividend

The regulation on the distribution of dividend is another approach to maintain the total assets of the company, which will be advantageous to the amount claimable by creditors. Under UK law, the procedure to distribute the dividend appears in Part 23 of the CA 2006. The common rule on the distribution is that it shall be made out of the profits.[287] Moreover, it provides very careful regulations regarding the distribution of the dividend, which appears in the justification of the distribution by referring to the relevant accounts. Members shall be liable for unlawful distribution,[288] while directors shall be liable under the breach of trust law.

A similar concept was derived from the CCC, and the Thai draft law also recognises the same approach, namely, that the distribution shall only be made out of the profits and there is a requirement to allocate a reserve fund.[289] The company shall be liable for the failure to comply with these duties.[290] The creditors shall file the claim against unlawful distribution.[291] Compared to UK law, it could be said that Thai

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[286]The Draft Law on Single Member Companies Act B.E...., s. 32 and CCC s. 1225
[287] CA s. 830
[288] CA s. 847(2)
[289] The Draft Law on Single Member Companies Act B.E...., s. 28, 29; CCC s. 1202
[290] The Draft Law on Single Member Companies Act B.E...., s. 52; the Offence relating to Registered Partnership, Limited Company, Association and Foundation Act B.E. 2499 s. 19
[291] The Draft Law on Single Member Companies Act B.E...., s. 30; CCC s. 1203

law has already provided appropriate creditors' rights and protections in single member companies.

In summary, from my perspective, Thai draft law has provided sufficient regulations regarding the maintenance of capital, which reflects the concern about creditors' rights and protections in single member companies.

4.4.8 Mandatory Disclosure

Due to the characteristic that single member companies consist of a sole member who has limited liability and this member has absolute power to control the business, this member could easily make decisions by himself that affect the rights of other relevant parties. Therefore, the mandatory disclosure of information and documents is considered to be one of the most significant approaches to protect creditors' rights. There are several regulations under the Thai and UK law that impose mandatory disclosure on single member companies, which reflect the transparency rule, as discussed below.

4.4.8.1 Registration of Information

Under UK law, the name and address of the sole member and a statement declaring that the company has only one member shall be recorded in the company's register of members.[292]

Under Thai draft law, the company shall use the name indicating that it is a single member company. The company shall be liable for the failure to do so.[293] The lists of incorporation and the Articles of Association shall consist of important information required by law and the company must be re-registered if there are any changes. The directors shall be liable for the failure to comply with these duties[294] and the company shall not claim the said statement against a third person.[295] This

[292] CA s. 123
[293] The Draft Law on Single Member Companies Act B.E...., s. 7 and 48
[294] The Draft Law on Single Member Companies Act B.E...., s. 12-13 and 49
[295] The Draft Law on Single Member Companies Act B.E...., s. 5

information should be retained by the registrar and be accessible to the other person.[296]

The fact that the member is the sole member of the company is crucial to the third person because the sole member has the absolute power in the conduct of the company. The notification to the registrar of the change will allow all stakeholders to acknowledge the information before engaging in any transactions with the single member company.[297] Therefore, in my opinion, the Thai draft law has successfully stipulated the regulations in connection with the registration of information.

4.4.8.2 Record of Decisions by Sole Members

Since there is no general meeting in a single member company, one of the specific provisions on single member companies under UK law is that a record of any decisions made by the sole member should be provided to the company.[298] This is important evidence to express the member's internal intention to the third person.[299]

It is indicated under the Thai draft law that only certain important transactions should be approved by the member; for instance, the conduct regarding the company's assets valued at more than half of the total assets, the increase or reduction of capital, conduct other than that in the ordinary course of business and the amendment of the Articles of Association.[300] This provision reflects the concern about member's interest in the management of the company. In fact, this conduct could also affect the position of the creditors who are involved with the single member company. As a result, the law should impose certain duties in the event that the member makes a significant decision. However, there is no regulation that reflects the concern about creditors' rights and protections in this situation. Therefore, I would like to suggest that the decisions made by sole member should be recorded and made accessible to the public.

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[296] The Draft Law on Single Member Companies Act B.E...., s. 6
[297] Legal and Development Research Institute of Chulalongkorn University (n 182) 44
[298] CA s. 357
[299] Legal and Development Research Institute of Chulalongkorn University (n 182) 124
[300] The Draft Law on Single Member Companies Act B.E...., s. 21

4.4.8.3 Contracts with Sole Members

Under UK law, apart from the ordinary course of business, the contract between the company and its sole member shall be made in writing.[301] This is one of the few provisions under the CA 2006 which specifically relates to single member companies. This provision is a significant mechanism to prevent the sole member, who has absolute power, binding the company to a dishonest transaction for his own benefit. It also reflects the concern that a sole member could easily exploit the benefit from his single member company, which would consequently affect the total assets of the company. Besides, this kind of contract should be made clearly in writing so that the third person could acknowledge the rights and obligations that bound the company. However, no similar provision existed in the draft law. Therefore, I suggest that it would be appropriate to introduce it into the Thai draft law in order to enhance creditors' rights and protections in a single member company.[302]

4.4.8.4 Accounts, Reports and Audit

The mandatory disclosure of a company's accounts and reports is another important mechanism to secure creditors' rights and protections. These documents must be prepared and examined accurately as stipulated by the law. Therefore, third parties will be able to access these documents to determine the financial status of the company and be able to estimate the risk of engaging in business transactions with it. Under the Thai draft law, the company has the duty to prepare accounts containing the required information and submit an annual balance sheet approved by the member to the registrar. These documents must be retained for inspection by the member and registrar for a specific period. Unless otherwise stipulated, the balance sheet shall be audited by an auditor. The company and the directors shall be liable for the failure to comply with these duties.[303] According to the current existing law under the Thai jurisdiction, i.e. Accounting Act B.E. 2543 s. 11 paragraph 3, there is an exemption for registered partnerships from examination by the auditor where their capital, assets or income does not exceed the amount stipulated

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[301] CA s. 231

[302] Legal and Development Research Institute of Chulalongkorn University (n 182) 134-135

[303] The Draft Law on Single Member Companies Act B.E...., s. 23, 24, 50 and 51

by the ministerial regulations; however there is no such exemption for limited companies. However, directors or liquidators who make a false statement or conceal the facts regarding the financial status of the company are held criminally liable.[304]

The UK law also imposes the duty to retain accounting records for a specific period.[305] It also requires the directors to give an opinion on the accounting records.[306] The accounts and reports must be submitted to the registrar each financial year.[307] Nevertheless, considering the cost, it may not be appropriate to have external auditors in small enterprises such as single member companies.[308] Therefore, the interesting issue on the reports and audit is that small companies shall be exempted from some duties such as preparing a strategic report, directors' report and examination of the accounts by an auditor in order to reduce the difficulty in operating a small business.[309] Rather than focusing on the type of business organisation, the UK law categorises them by turnover, balance sheet total and number of employees to determine whether each company qualifies as a small company. It imposes different appropriate regulations regarding the accounts, reports and audit. Therefore, single member companies under UK law may have only simplified duties..

As can be seen from the above discussion, the creditworthiness of a single member company is a controversial issue. On the one hand, there is an opinion that, due to the fact that single member companies could be easily used to engage in dishonest activities which will inevitably affect the creditors' interest, the draft law should contain various strict regulations in order to prevent this from happening. On the other hand, there is also a concern that imposing excessively restrictive regulations will make it difficult to manage the business and traders may eventually decide not to establish single member companies under this draft law. In fact, since each company has a very distinctive nature of business and financial status, it may not be appropriate for every company to impose fixed regulations regarding the duties related to financial documents. While one regulation may seem to be excessively

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[304] The Draft Law on Single Member Companies Act B.E...., s. 55
[305] CA s. 386-389
[306] CA s. 393
[307] CA s. 441
[308] Legal and Development Research Institute of Chulalongkorn University (n 182) 98
[309] CA Part 15 s. 380-474 and Part 16 s. 475-539

restrictive and make it difficult to manage small companies, it may be too lenient for larger firms. From my perspective, the criteria in determining a company's duties related to financial documents under UK law are interesting and should be introduced into the Thai law for the purpose of providing an appropriate level of creditors' rights and protections. Instead of focusing on whether the company is a single member company or other business organisation, the draft law should determine the duties related to accounts, reports and audit by considering some criteria, such as turnover, balance sheet total, number of employees or other appropriate criteria that accurately reflect the size of the business and the risk involved in doing business with a particular company.

4.4.9 Adjustment of Transactions

Some vulnerable transactions engaged in by the company could affect the amount claimable by creditors. There are mechanisms to adjust the company's remaining assets in order to maximise the value of these transactions. Different from imposing liability on relevant parties, these provisions aim to provide remedies for damage, i.e. to restore the position of the company or cancel vulnerable transactions.

There are various remedies for vulnerable transactions under UK law. Firstly, several relevant parties may file a petition to the court for an order to restore the position or protect the interests of victims of a transaction at an undervalue with the aim of putting the asset beyond the claim or to prejudice victim whether it occurs before or after the commencement of the procedure.[310] Secondly, the provision regarding transactions at an undervalue, which has the same criteria as the above rule, or the provision regarding preferences shall be applied when a company is insolvent or in liquidation. These mechanisms shall be applied to transactions engaged in within

[310] IA Part XVI: provisions against debt avoidance, transaction defrauding creditors s. 423-425

a specific period prior to the onset of insolvency. The court may give an order to restore to the position before engaging in the said transaction.[311]

Under Thai law, it is simply stipulated that creditors are entitled to claim for cancellation by the court of any transaction conducted with the intention to prejudice creditors.[312] This provision is also applicable when the company becomes bankrupt or in the general reorganisation procedure. Any transaction engaged in within the relevant time before or after the bankruptcy petition or with an unreasonably small remuneration shall be presumed to be prejudicial to creditors.[313] Moreover, a transfer or act by debtors during a specific period before or after the bankruptcy petition with the intent to enable any creditor to have an advantage over others shall be cancelled by a court order.[314]

Although there are some different procedures and requirements to restore the position of the company when it has engaged in vulnerable transactions due to the distinctive procedure of insolvency, it can be seen that the Thai law has provided similar remedies to the UK law, i.e. the adjustment of a transaction at an undervalue and preferences. In my view, these remedies are also appropriate for application to enhance creditors' rights and protections in single member companies, where the member has engaged in dishonest transactions in order to prejudice the creditors.

Nevertheless, there is an interesting issue under the draft law, which is that creditors of single member companies are able to exercise the right to claim for the repayment of a debt owed to the company from the third person on behalf of themselves which is called "exercising the debtor's claims".[315] This draft law simply provides a right to creditors that seems to be much more powerful than the mechanism under the CCC. Under the CCC, if the debtor refuses or neglects to exercise a claim in order to prejudice creditors, creditors may exercise such a claim in their own name of

[311] IA Part VI: miscellaneous provisions applying to companies which are insolvent or in liquidation, adjustment of prior transaction, transaction at an undervalue or preferences (s. 238 – 241)
[312] CCC s. 237
[313] Thai Bankruptcy Act B.E. 2483, s. 113-114 and 90/40
[314] Thai Bankruptcy Act B.E. 2483, s. 115 and 90/41
[315] The Draft Law on Single Member Companies Act B.E...., s. 22 paragraph 3

behalf of the debtor, except for those that are purely personal to the debtor.[316] The fact must be shown that the debtor has refused or neglected to exercise the right; for instance, taken no or inappropriate action to enforce the repayment of the debt or let the claim goes overdue with the intention to prejudice the creditors. Besides, there must be consequences if there are insufficient assets to repay the debt or the creditors are unable to claim for the full amount of the debt. However, if debtor is still able to fulfil his obligation to the creditors, they cannot exercise this right. It is also emphasised that the creditors cannot obtain more than what is due to them.[317] Moreover, the defendant who owes a debt to a debtor may establish all the defences that arose prior to the action against the creditor which he may have against the debtor.[318] These defences are, for example, the debtor is in default of the contract, the contract is set aside, the claim is extinguished because the debt has been paid, release or compound of debt and the right to offset the debt.[319] Since the draft law fails to indicate these conditions, it could be interpreted that the creditors shall exercise the debtor's claims even though a single member company debtor does not intend to prejudice the creditors or there is no evidence that the ongoing business is facing difficulties. Although this provision is advantageous to creditors, it provides them with excessive rights and protections.

4.4.10 Restriction on Re-use of Company Names

The re-use of company names that had been in the process of insolvent liquidation by the directors or shadow directors is also prohibited for a certain period under UK law. This provision reflects the concern regarding a situation in which the director allows the insolvent company to be liquidated for the purpose of evading his obligation and then establishes a new company and operates a similar business with similar resources, which is called the phoenix syndrome.[320] Single member companies

[316] CCC s. 233
[317] CCC s. 235
[318] CCC s. 236
[319] The Draft Law on Single Member Companies Act B.E...., s. 22 paragraph 3; CCC s. 233 – 236
[320] IA s. 216

tend to be small businesses which are inclined to have a high potential of failure because of a lack of expertise. Therefore, this mechanism could play an important role in preventing the incorporation of a new company in order to evade the debt owed to creditors.

It has been found from this comparative study of creditors' rights and protections in single member companies between the Thai and UK jurisdictions that various creditors' rights and protections exist in both jurisdictions. Some rules are adopted from the same concept; therefore, there are several similar provisions which may be different in small details. Nevertheless, there are also some other distinctive rules in the UK law, which could be further adopted into the Thai draft law in order to encourage an effective mechanism of creditors' rights and protection in single member companies.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Single member company is a type of business that is recognised under various jurisdictions. After the incorporation, it has a separate legal entity from its sole member. Due to the hybrid characteristic of single member companies, i.e. consisting of sole members who limit their liability for the companies' obligations to not exceed their contribution; however, they have the absolute power to control the management of the business, which concerns creditors that they will be exposed to a higher risk of the inability to recover their debts for several reasons. The first is the business failure of single member companies. Since single member companies are generally owner-managed, where a sole member is responsible for all the duties in the management of the business, there is a higher potential of lacking expertise and stability, which could cause the business los. The second reason is that a single member company could easily be used as a vehicle for engaging in illegitimate activities due to the relaxed regulations; for instance, defrauding creditors or operating an illegal business. Therefore, this leads to the controversial issue of the mechanisms that should be provided by the company and corporate insolvency law as the default rules for the purpose of encouraging creditors' rights and protection in single member companies.

The appropriate level of creditors' rights and protections in single member companies is the key to the success of the new draft law under Thai jurisdiction. If the regulations in this draft law impose excessively restrictive duties on single member companies, it will obstruct the management of the business. As a result, sole traders will refuse to establish single member companies under this draft law; instead, they will continue to incorporate their companies under the Civil and Commercial Code by using nominees. On the other hand, if the draft law imposed less restrictive rules, it could be easily used to conduct dishonest activities. Single member

companies under this draft law would then become untrustworthy business organisations in the view of other parties. As a result, single member companies would become unattractive business organisations with which to engage in business transactions.

In the UK, single member companies are explicitly recognised by the Companies Act 2006 as being similar to other types of business organisation. The existence of single member companies does not rely on their sole member. There are only a few provisions that especially relate to the unique characteristics of single member companies; for instance, quorums at meetings, record of sole member's decisions and a contract between the company and its sole member. Apart from these specific provisions, single member companies in the UK are governed by the general regulations with the necessary modification as other types of business organisations.

The mandatory disclosure of information regarding the management of business is the significant mechanism to protect creditors' rights under the Companies Act 2006. Besides, it explicitly imposes the duty on the directors to consider the interests of creditors in the event of insolvency. Parallel to the Insolvency Act 1986, it imposes liabilities against directors on the grounds of fraudulent and wrongful trading to make a contribution to the company's assets. Another approach under this Act is the adjustment of the transaction at an undervalue and preferences, when the court shall make an order to restore the position of the company. The significant consequence of these mechanisms under the Insolvency Act 1986 is that the amount enforceable by the creditors for the repayment of the debt from the company will increase. Moreover, there is also a restriction on re-use of company names under this law in order to prevent a situation in which a new company is established in order to evade an obligation of the former insolvent company. Finally, in the event that a company is set up as a sham for fraudulent conduct, the court may have discretion to apply the piercing of corporate veil principle for the sake of justice. It may be concluded that, even though there are only a few provisions that specifically relate to single member companies, the general mechanisms that appear in the Companies Act 2006, the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 have already provided sufficient rights and protections to creditors.

Under the Thai jurisdiction, there is currently an attempt to recognise single member companies under a separate law, i.e. the Draft Law on Single Member Companies Act B.E… under which the existence of a company seems to rely on its sole member. There are special provisions regarding the qualifications of the sole member and director. Similar to the concept in the Civil and Commercial Code, there are regulations in connection with capital maintenance and the mandatory disclosure of information regarding the management of single member companies. Apart from this draft law, the general provisions appear in the Civil and Commercial Code and the Bankruptcy Act B.E. 2483; for example, the cancellation of fraudulent acts and transfers or acts with the intent to enable any creditor to have an advantage over other creditors shall be attributed to the dishonest conduct of single member companies in order to protect the creditors' rights.

I found several issues that are relevant to creditors' rights and protection in single member companies in this study. Firstly, while UK law does not impose any restriction on members' qualifications, the Thai draft law focuses on this issue by stipulating several qualifications. However, some of these restrictions, i.e. the prohibition on juristic persons to establish a single member company and the prohibition on establishing several single member companies by a sole person seem to be quite restrictive. Nevertheless, since there is a strong bond between single member companies and its sole members, it seems to be appropriate to restrict the transfer of single member companies to a new trader. Secondly, I found that both jurisdictions place importance on the directors' qualifications; however, UK law has gone beyond Thai law and imposed a specific duty on directors to consider the creditors' interests, such as the provisions on wrongful and fraudulent trading. Moreover, it appears that the principle of the disregard of a corporate entity is used much more explicitly in the UK than in the Thai jurisdiction. Considering to the issue of contribution of capital, the restriction on the contribution by labour under Thai law seems to be inappropriate with current business trend. Notwithstanding, the issues of capital maintenance and the adjustment of transactions, both jurisdictions have stipulated a law that has a similar function to protect creditors. Another issue is related to the mandatory disclosure rules; both jurisdictions impose the duty on single member companies to register or submit important information to the registrar. However, the UK law has

provided interesting duties, specifically for single member companies, which are to record the decisions of the sole member and make a contract between the company and its sole member in writing. Besides, the duties regarded accounts, reports and audit shall be determined by the size of the company. Finally, the restriction on re-use of company names is another UK mechanism that does not exist in the Thai jurisdiction.

From my perspective, the Draft Law on Single member Company B.E… Act should stipulate provisions that are consistent with the general rules that exist in the Civil and Commercial Code in order to harmonise the regulations imposed on each type of business organisations under Thai law. Nevertheless, when considering the hybrid characteristic of single member companies, some traditional regulations under the Civil and Commercial Code may be exempted in order to facilitate this kind of business, while some new mechanisms should also be imposed in order to provide the appropriate level of creditors' rights and protections. I found from the study that the mechanisms of mandatory disclosure of information and the imposition of both civil and criminal liabilities on the relevant persons are significant approaches to provide creditors with rights and protections and to encourage the success of single member companies under this draft law.

5.2 Recommendations

I would like to recommend the addition of the following regulations to the Draft Law on Single member Companies B.E… in order to promote creditors' rights and protections in single member companies;

1. There should be a regulation that the decisions made by sole members of single member companies must be made in writing. Parallel to the procedure for multi-member companies to pass a resolution in the general meeting, the expression of an intention by sole members in single member companies should be made in the form of writing for the purpose of disclosure to the public. Therefore, the creditors will be

able to access the information of single member companies and assess the risk before engaging in transactions with them.

2. One of specific regulations that should be enacted in the draft law is that the contract between the company and the sole member must be made in writing. There is concern that sole members could dishonestly enter into a contract with their single member company that contains unfair conditions; for instance, that the single member company should pay a consideration that is higher than in the ordinary course of business or that the single member company should suffer from any liabilities or duties. The consequence of these conditions is that the wealth will be transferred from the single member company to the sole member. The interests of the company will be exploited, which will eventually affect the interests of the company's creditors.

3. The duties regarding the preparation of the company's accounts and reports should be determined by the size of the single member company. Similar to UK law, the size of the company could be determined by the turnover, balance sheet total and number of employees. Based on the idea that small enterprises will generally have less effect on other stakeholders than large ones, the companies that qualify as small companies shall be exempted from certain duties that make it unnecessarily difficult to manage the business; for instance, the duty to have the balance sheet examined by auditors. Imposing fixed duties regarding the preparation of financial documents may not be appropriate for every single member company.

4. Specific duties concerning the interests of the creditors in the event of insolvency should be imposed on directors who are responsible for the management of the business. They shall be liable to make a contribution to the company for their fraudulent or wrongful trading.

The consequence of these liabilities is that the amount enforceable in the total company's assets will increase.

5. There should be a restriction on re-use of the company names in order to avoid the phoenix syndrome so that companies may not go into insolvent liquidation for the purpose of evading their legal obligation to the creditors.

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APPENDIX

APPENDIX A

The Draft Law on Single Member Companies B.E…. Act

(Approved by the Council of Ministers on January 24, 2017)

ร่าง
พระราชบัญญัติ
การจัดตั้งบริษัทจำกัดคนเดียว พ.ศ. ....

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โดยที่เป็นการสมควรมีกฎหมายว่าด้วยการจัดตั้งบริษัทจำกัดคนเดียว
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มาตรา 1 พระราชบัญญัตินี้เรียกว่า “พระราชบัญญัติการจัดตั้งบริษัทจำกัดคนเดียว พ.ศ. ....”

มาตรา 2 พระราชบัญญัตินี้ให้ใช้บังคับเมื่อพ้นกำหนดหนึ่งร้อยยี่สิบวันนับแต่วันประกาศในราชกิจจานุเบกษาเป็นต้นไป

มาตรา 3 ในพระราชบัญญัตินี้

“บริษัท” หมายความว่า บริษัทจำกัดคนเดียวที่ได้จดทะเบียนตามพระราชบัญญัตินี้

“บริษัทจำกัด” หมายความว่า บริษัทจำกัดตามประมวลกฎหมายแพ่งและพาณิชย์

“เจ้าของบริษัท” หมายความว่า บุคคลธรรมดาที่เป็นเจ้าของเงินหรือทรัพย์สินที่นำมาลงทุนในบริษัท

“นายทะเบียน” หมายความว่า อธิบดีกรมพัฒนาธุรกิจการค้า และให้หมายรวมถึงผู้ซึ่งอธิบดีกรมพัฒนาธุรกิจการค้ามอบหมายด้วย

“กรรมการ” หมายความว่า กรรมการของบริษัท

“สารวัตรใหญ่บัญชี” หมายความว่า อธิบดีกรมพัฒนาธุรกิจการค้า และให้หมายความรวมถึงผู้ซึ่งอธิบดีกรมพัฒนาธุรกิจการค้ามอบหมายด้วย ตามกฎหมายว่าด้วยการบัญชี 2 27.11.58

“สารวัตรบัญชี” หมายความว่า ผู้ซึ่งอธิบดีแต่งตั้งให้เป็นสารวัตรบัญชีประจำสำนักงานบัญชีประจำท้องที่ ตามกฎหมายว่าด้วยการบัญชี

“เงินปันผล” หมายความว่า ผลตอบแทนการลงทุนที่จ่ายเป็นตัวเงินให้แก่เจ้าของบริษัท

“อธิบดี” หมายความว่า อธิบดีกรมพัฒนาธุรกิจการค้า

“รัฐมนตรี” หมายความว่า รัฐมนตรีผู้รักษาการตามพระราชบัญญัตินี้

ให้รัฐมนตรีว่าการกระทรวงพาณิชย์รักษาการตามพระราชบัญญัตินี้ และให้มีอำนาจออกกฎกระทรวงกำหนดค่าธรรมเนียมไม่เกินอัตราท้ายพระราชบัญญัตินี้ ยกเว้นค่าธรรมเนียม แต่งตั้งพนักงานเจ้าหน้าที่ และกำหนดกิจการอื่น ตลอดจนออกประกาศเพื่อปฏิบัติการตามพระราชบัญญัตินี้ กฎกระทรวง และประกาศนั้น เมื่อได้ประกาศในราชกิจจานุเบกษาแล้วให้ใช้บังคับได้

หมวด 1

บททั่วไป

มาตรา 4 ให้จัดตั้งบริษัทตามพระราชบัญญัติฉบับนี้ เรียกว่า “บริษัท...จำกัด (คนเดียว)” และให้มีสภาพเป็นนิติบุคคลตามประมวลกฎหมายแพ่งและพาณิชย์ นับตั้งแต่ได้จดทะเบียน

หลักเกณฑ์ วิธีการและเงื่อนไขในการจดทะเบียน ให้เป็นไปตามที่นายทะเบียนประกาศกำหนด

มาตรา 5 เจ้าของบริษัท หรือบริษัท จะถือเอาประโยชน์จากบุคคลภายนอกจากข้อความหรือรายการใดๆ ที่บังคับให้ต้องจดทะเบียนตามพระราชบัญญัตินี้ไม่ได้ จนกว่านายทะเบียนจะได้รับจดทะเบียนเรียบร้อยแล้ว แต่ฝ่ายบุคคลภายนอกจะถือเอาประโยชน์เช่นว่านั้นได้

มาตรา 6 บุคคลใดเมื่อได้ชำระค่าธรรมเนียมแล้ว มีสิทธิตรวจ หรือคัดข้อความในรายการจดทะเบียนหรือเอกสารที่นายทะเบียนเก็บรักษาไว้ หรือจะขอให้นายทะเบียนคัดสำเนาหรือถ่ายเอกสารฉบับใดๆ พร้อมด้วย คำรับรองของนายทะเบียนว่าถูกต้อง หรือจะขอให้นายทะเบียนออกหนังสือรับรองรายการใดที่จดทะเบียนไว้ก็ได้

ผู้มีส่วนได้เสียของบริษัท เมื่อได้เสียค่าธรรมเนียมตามที่กำหนดในกฎกระทรวงแล้ว ชอบที่จะขอให้ นายทะเบียนออกหนังสือรับรองการจดทะเบียนนั้นให้ก็ได้ตามแบบที่อธิบดีประกาศกำหนด

มาตรา 7 บริษัทต้องปฏิบัติ ดังนี้

(1) ใช้ชื่อซึ่งต้องมีคำว่า “บริษัท...จำกัด (คนเดียว)” ในกรณีที่ใช้ชื่อเป็นอักษรภาษาต่างประเทศจะใช้คำซึ่งมีความหมายว่าเป็น “บริษัท...จำกัดโดยบุคคลคนเดียว” ตามที่กำหนดในกฎกระทรวงแทนก็ได้

(2) แสดงชื่อ ที่ตั้งสำนักงาน และเลขทะเบียนบริษัทไว้ในจดหมาย ประกาศ ใบส่งของ และใบเสร็จรับเงิน

(3) แสดงชื่อบริษัทไว้ในดวงตรา (ถ้ามี)

(4) จัดให้มีป้ายชื่อไว้หน้าสำนักงานใหญ่ และสำนักงานสาขา (ถ้ามี) และดำเนินการมิให้มีป้ายชื่อดังกล่าวในกรณีที่ไม่ใช้สถานที่นั้นเป็นสำนักงานใหญ่ หรือสำนักงานสาขา หรือในกรณีที่จดทะเบียนเลิกบริษัทหรือสาขาของบริษัทแล้ว

การจัดให้มีหรือการดำเนินการมิให้มีป้ายชื่อตาม (4) ต้องกระทำภายในสิบสี่วันนับแต่วันจดทะเบียนบริษัท หรือไม่ใช้สถานที่นั้นเป็นสำนักงานใหญ่ หรือสำนักงานสาขา หรือจดทะเบียนเลิกบริษัท หรือเลิกสาขา แล้วแต่กรณี

มาตรา 8 ถ้านายทะเบียนเห็นว่าชื่อของบริษัทใดที่ขอจดทะเบียน ไม่ว่าชื่อนั้นจะเป็นภาษาไทยหรือภาษาต่างประเทศ เหมือนหรือคล้ายกับชื่อของบริษัทตามพระราชบัญญัตินี้ ห้างหุ้นส่วนจดทะเบียน บริษัทจำกัด หรือบริษัทมหาชนจำกัด ที่ยื่นหรือที่จดทะเบียนไว้ก่อน ให้นายทะเบียนปฏิเสธการขอจดทะเบียนนั้น และแจ้งให้ผู้ขอจดทะเบียนทราบ

เมื่อปรากฏแก่นายทะเบียนว่าชื่อของบริษัทที่จดทะเบียนภายหลัง มีชื่อเหมือนหรือคล้ายกับชื่อของบริษัทที่จดทะเบียนไปก่อนแล้ว ให้นายทะเบียนสั่งให้บริษัทที่จดทะเบียนภายหลังแก้ไขภายในสิบสี่วันนับแต่วันที่ นายทะเบียนมีคำสั่งและเมื่อพ้นกำหนดระยะเวลาดังกล่าวบริษัทไม่แก้ไข นายทะเบียนสั่งให้เลิกบริษัทได้

หมวด 2
การจัดตั้งบริษัท

มาตรา 9 บุคคลคนหนึ่งอาจขอจัดตั้งบริษัทตามพระราชบัญญัตินี้ได้หนึ่งบริษัท เว้นแต่เป็นไปตามที่กำหนดในกฎกระทรวง

มาตรา 10 เจ้าของบริษัทรับผิดจำกัดเท่าจำนวนทุนที่นำมาลงในบริษัท และมีหน้าที่ต้องชำระทุน จดทะเบียนเต็มจำนวน

มาตรา 11 เจ้าของบริษัทต้องมีคุณสมบัติ และไม่มีลักษณะต้องห้าม ดังต่อไปนี้

(1) บรรลุนิติภาวะ

(2) มีสัญชาติไทย

(3) ไม่เป็นคนไร้ความสามารถ หรือคนเสมือนไร้ความสามารถ หรือไม่เป็นบุคคลล้มละลาย

(4) ไม่เคยต้องโทษจำคุกตามคำพิพากษาถึงที่สุดในความผิดฐานฉ้อโกง โกงเจ้าหนี้ ยักยอก ความผิดเกี่ยวกับการค้าตามประมวลกฎหมายอาญา หรือความผิดตามกฎหมายว่าด้วยการกู้ยืมเงินที่เป็นการฉ้อโกงประชาชน เว้นแต่พ้นโทษมาแล้วไม่น้อยกว่าห้าปีก่อนวันขอจัดตั้งบริษัท และ

(๕) ไม่เคยต้องโทษจำคุกตามคำพิพากษาถึงที่สุด หรือถูกเปรียบเทียบปรับในความผิดฐานให้ความช่วยเหลือ สนับสนุน หรือร่วมประกอบธุรกิจ หรือมีอำนาจครอบงำกิจการ หรือมีอำนาจควบคุมบริษัท โดยแสดงออกว่าเป็นธุรกิจของตนแต่เพียงผู้เดียว หรือลงทุนแทนคนต่างด้าว เพื่อให้คนต่างด้าวประกอบธุรกิจโดยหลีกเลี่ยง หรือฝ่าฝืนกฎหมายว่าด้วยการประกอบธุรกิจของคนต่างด้าว เว้นแต่พ้นโทษมาแล้วไม่น้อยกว่าห้าปีก่อนวันขอจัดตั้งบริษัท

มาตรา 12 ในการขอจดทะเบียนจัดตั้งบริษัท ให้กรรมการที่เป็นเจ้าของบริษัทหรือกรรมการที่ได้รับมอบหมายจากเจ้าของบริษัทดำเนินการจดทะเบียนบริษัท โดยมีรายการจดทะเบียนอย่างน้อยดังต่อไปนี้

(๑) ชื่อบริษัทตามมาตรา 7 (๑)

(๒) ที่ตั้งสำนักงาน และที่ติดต่อของบริษัท

(๓) ทุนจดทะเบียนใช้เป็นตัวเงินหรือชำระเป็นทรัพย์สินอื่นนอกจากตัวเงิน กรณีเป็นทรัพย์สินอื่นนอกจากตัวเงิน จะต้องแสดงเกณฑ์ในการตีราคาทรัพย์สินนั้นด้วย

(๔) ชื่อ ที่ติดต่อ และลายมือชื่อ ของเจ้าของบริษัท และกรรมการ

(๕) กำหนดวันเลิกกิจการ ในกรณีที่กำหนดวันเลิกกิจการไว้ล่วงหน้า

(๖) ข้อกำหนดเกี่ยวกับการจัดการบริษัท

(๖.๑) วัตถุประสงค์ของบริษัทซึ่งต้องระบุประเภทธุรกิจโดยชัดแจ้ง

(๖.๒) อำนาจหน้าที่ของกรรมการ

(๖.๓) ข้อบังคับของบริษัท

(6.4) ข้อกำหนดอื่น (ถ้ามี)

หากมีการเปลี่ยนแปลงรายการตามวรรคหนึ่ง ให้กรรมการจดทะเบียนแก้ไขรายการทางทะเบียนภายในสิบสี่วัน นับแต่วันที่ได้รับความยินยอมเป็นหนังสือจากเจ้าของบริษัท

มาตรา 13 ข้อบังคับของบริษัทต้องไม่ขัดหรือแย้งกับรายการจดทะเบียนและบทบัญญัติแห่งพระราชบัญญัตินี้ และอย่างน้อยต้องกำหนดเรื่องดังต่อไปนี้

(1) การดำรงตำแหน่ง การพ้นจากตำแหน่ง จำนวนกรรมการ อำนาจกรรมการ และบำเหน็จกรรมการ

(2) เงินปันผลและเงินสำรอง

(3) การบัญชี การเงิน

(4) การสอบบัญชี (ถ้ามี)

(5) การใดๆ ที่ต้องได้รับความเห็นชอบจากเจ้าของบริษัทก่อนการดำเนินการ

ในการแก้ไขข้อบังคับ ให้กรรมการขอจดทะเบียนแก้ไขเพิ่มเติมภายในสิบสี่วันนับแต่วันที่เจ้าของบริษัท ให้ความเห็นชอบเป็นหนังสือ

มาตรา 14 ในกรณีที่บริษัทจัดตั้งสำนักงานสาขาเพื่อดำเนินกิจการของบริษัทไม่ว่าในหรือนอกราชอาณาจักร ให้ขอจดทะเบียนสำนักงานสาขาก่อนดำเนินการ

ในกรณีที่บริษัทเลิกสำนักงานสาขา ให้ขอจดทะเบียนเลิกสำนักงานภายในสิบสี่วันนับแต่วันเลิกสาขานั้น

มาตรา 15 บริษัทต้องมีสมุดทะเบียนผู้ลงทุน ซึ่งอย่างน้อยมีรายการดังต่อไปนี้

(๑) ชื่อ สัญชาติ ที่อยู่ อาชีพ ของผู้ลงทุน จำนวนเงินที่ใช้ลงทุนหรือที่ถือว่าได้ใช้เป็นการลงทุน

(๒) วัน เดือน ปี ที่ได้ลงทะเบียนเป็นผู้ลงทุน

สมุดทะเบียนผู้ลงทุน ท่านให้สันนิษฐานไว้ก่อนว่าถูกต้อง

มาตรา 16 ให้บริษัททำใบสำคัญการลงทุน โดยให้กรรมการลงลายมือชื่อเองคนหนึ่งเป็นอย่างน้อย ในใบสำคัญการลงทุน และมอบให้เจ้าของบริษัทถือไว้เป็นหลักฐานการลงทุน

ใบสำคัญการลงทุน อย่างน้อยต้องมีรายการต่อไปนี้

(๑) ชื่อบริษัท

(๒) มูลค่าของเงินและทรัพย์สินที่ลงทุน

(๓) ชื่อผู้ลงทุน

หมวด 3

การบริหารจัดการ

มาตรา 17 เจ้าของบริษัทอาจแต่งตั้งตนเองหรือบุคคลอื่นตั้งแต่หนึ่งคนขึ้นไปเป็นกรรมการเพื่อบริหารจัดการตามข้อบังคับบริษัท และอยู่ในความครอบงำของเจ้าของบริษัท

กรรมการต้องมีคุณสมบัติ และไม่มีลักษณะต้องห้าม ดังต่อไปนี้

(1) บรรลุนิติภาวะ

(2) มีถิ่นที่อยู่ในประเทศไทย

(3) ไม่เป็นบุคคลล้มละลาย คนไร้ความสามารถ หรือคนเสมือนไร้ความสามารถ

(4) ไม่เคยรับโทษจำคุกโดยคำพิพากษาถึงที่สุดในความผิดเกี่ยวกับทรัพย์ที่ได้กระทำโดยทุจริต เว้นแต่พ้นโทษมาแล้วไม่น้อยกว่าห้าปี ก่อนได้รับการแต่งตั้งเป็นกรรมการ

(5) ไม่เคยถูกลงโทษไล่ออกหรือปลดออกจากราชการ หรือองค์การหรือหน่วยงานของรัฐ ฐานทุจริตต่อหน้าที่

(6) ไม่เคยต้องโทษจำคุกตามคำพิพากษาถึงที่สุด หรือถูกเปรียบเทียบปรับในความผิดฐานให้ความช่วยเหลือ สนับสนุน หรือร่วมประกอบธุรกิจ หรือมีอำนาจครอบงำกิจการ หรือมีอำนาจควบคุมบริษัทโดยแสดงออกว่าเป็นธุรกิจของตนแต่เพียงผู้เดียว หรือลงทุนแทนคนต่างด้าว เพื่อให้คนต่างด้าวประกอบธุรกิจโดยหลีกเลี่ยง หรือฝ่าฝืนกฎหมายว่าด้วยการประกอบธุรกิจของคนต่างด้าว รวมทั้งผู้ซึ่งยินยอมให้บุคคลใดกระทำการดังกล่าว เว้นแต่ พ้นโทษมาแล้วไม่น้อยกว่าห้าปีก่อนวันขอจัดตั้งบริษัท

มาตรา 18 ภายใต้บทบัญญัติของมาตรา 20 เว้นแต่ข้อบังคับจะกำหนดเป็นอย่างอื่น หลักเกณฑ์เกี่ยวกับกรรมการให้กำหนดไว้ดังต่อไปนี้

(๑) กรรมการอาจได้รับการแต่งตั้งหรือถอดถอนจากเจ้าของบริษัทเมื่อใดก็ได้

(๒) กรรมการทุกคนมีสิทธิและหน้าที่เท่าเทียมกันในการบริหารจัดการและการดำเนินกิจการทั้งปวง ของบริษัท รวมถึงการทำหน้าที่เป็นตัวแทนของบริษัท

(๓) ข้อหารือในการประชุมกรรมการให้ตัดสินโดยเอาเสียงข้างมากเป็นใหญ่

(๔) กรณีเจ้าของบริษัทเป็นกรรมการคนเดียวของบริษัท ถึงแก่ความตาย ให้ดำเนินการตามประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 6 มรดก

กรณีกรรมการถูกถอดถอนตาม (1) หรือไม่มีกรรมการอื่นที่มีอำนาจกระทำการแทนได้ ให้เจ้าของบริษัทตั้งกรรมการแทนกรรมการที่ถูกถอดถอน

มาตรา 19 กรรมการพ้นจากตำแหน่งเมื่อ

(1) ตาย

(2) ลาออก

(3) ขาดคุณสมบัติ หรือมีลักษณะต้องห้ามตามมาตรา 17

(4) ถูกถอดถอนตามมาตรา 18 (1)

(5) ศาลมีคำสั่งให้ออก

มาตรา 20 กรรมการคนใดจะลาออกจากตำแหน่ง ให้ยื่นใบลาออกเป็นหนังสือ การลาออกมีผลนับแต่วันที่ใบลาออกไปถึงบริษัท

กรรมการซึ่งลาออกตามวรรคหนึ่ง จะแจ้งการลาออกของตนให้นายทะเบียนทราบด้วยก็ได้

มาตรา 21 การดำเนินการดังต่อไปนี้ ต้องได้รับความเห็นชอบจากเจ้าของบริษัท

(๑) ขาย ให้เช่า แลกเปลี่ยน จำหน่าย จ่าย หรือโอนโดยประการอื่นใด ซึ่งทรัพย์สินจำนวนมากกว่ากึ่งหนึ่งของบริษัทหรือตามที่กำหนดในข้อบังคับ โดยที่ไม่ใช่กิจการปกติของบริษัท

(๒) การเพิ่มทุนและการลดทุน

(๓) กิจกรรมอื่นใดนอกไปจากกิจการปกติของบริษัท

(๔) แก้ไขข้อบังคับของบริษัท

ความเห็นชอบของเจ้าของบริษัทอาจทำได้โดยไม่ต้องเข้าประชุมร่วมกับกรรมการ แต่ให้จัดทำเป็นหนังสือ ลงลายมือชื่อตนเอง หรือลายมือชื่อของผู้ได้รับมอบอำนาจแทนเจ้าของบริษัทก็ได้

มาตรา 22 ในการดำเนินกิจการของบริษัท กรรมการต้องปฏิบัติหน้าที่ให้เป็นไปตามกฎหมาย วัตถุประสงค์ และข้อบังคับ ด้วยความซื่อสัตย์สุจริตและด้วยความระมัดระวังเพื่อประโยชน์สูงสุดของบริษัท

หน้าที่ความซื่อสัตย์สุจริตและความระมัดระวังตามวรรคหนึ่ง รวมถึงการไม่กระทำการใดที่มีผลผูกพันกับบริษัทโดยที่มีส่วนได้เสียส่วนตนขัดกับส่วนได้เสียของบริษัท การไม่กระทำการใดที่เป็นการแข่งขันกับกิจการของบริษัท

เจ้าหนี้ของบริษัทอาจใช้สิทธิเรียกร้องในนามของตนเองแทนบริษัทในหนี้ของบริษัทได้

มาตรา 23 กรรมการอาจเป็นผู้ทำบัญชีหรือจัดให้มีผู้ทำบัญชี เพื่อจัดทำงบการเงินส่งให้เจ้าของบริษัทเห็นชอบเป็นประจำทุกปี

กรรมการต้องเก็บรักษาบัญชีและงบการเงินไว้ให้แก่เจ้าของบริษัทและนายทะเบียนเพื่อเปิดเผยแก่สาธารณะเป็นระยะเวลาห้าปีนับจากวันปิดบัญชี ทั้งนี้ตามหลักเกณฑ์และวิธีการที่อธิบดีประกาศกำหนด

มาตรา 24 ให้บริษัทเป็นผู้มีหน้าที่จัดทำบัญชี และต้องจัดให้มีการทำบัญชีสำหรับการประกอบธุรกิจ โดยมีรายละเอียด หลักเกณฑ์ และวิธีการตามที่บัญญัติไว้ในกฎหมายว่าด้วยการบัญชี เท่าที่ไม่ขัดต่อบทบัญญัติ แห่งพระราชบัญญัตินี้ และที่อธิบดีประกาศกำหนด

ให้บริษัทเริ่มทำบัญชี นับแต่วันที่บริษัทได้รับจดทะเบียนเป็นนิติบุคคลตามกฎหมาย และต้องปิดบัญชีครั้งแรกภายในสิบสองเดือนนับแต่วันเริ่มทำบัญชี และปิดบัญชีทุกรอบสิบสองเดือน นับแต่วันปิดบัญชีครั้งก่อน เว้นแต่ได้รับอนุญาตจากสารวัตรใหญ่บัญชี หรือสารวัตรบัญชีตามมาตรา 25

ให้บริษัทจัดทำงบการเงิน และงบการเงินต้องมีรายการย่อตามที่อธิบดีประกาศกำหนด เว้นแต่กรณีที่ได้มีกฎหมายเฉพาะกำหนดเพิ่มเติมจากรายการย่อของงบการเงินที่อธิบดีกำหนดไว้แล้ว ให้ใช้รายการย่อตามที่กำหนดในกฎหมายเฉพาะนั้น

งบการเงินต้องได้รับการตรวจสอบและแสดงความเห็นโดยผู้สอบบัญชีรับอนุญาต เว้นแต่อธิบดีโดยความเห็นชอบของรัฐมนตรี กำหนดยกเว้นการมีผู้สอบบัญชี

การยื่นงบการเงินให้เป็นไปตามหลักเกณฑ์และวิธีการที่อธิบดีประกาศกำหนด

มาตรา 25 ให้สารวัตรใหญ่บัญชีและสารวัตรบัญชีตามกฎหมายว่าด้วยการบัญชี มีอำนาจตามกฎหมาย ว่าด้วยการบัญชี กับบริษัทเท่าที่ไม่ขัดหรือแย้งกับพระราชบัญญัตินี้

มาตรา 26 ในข้อบังคับบริษัทอาจกำหนดให้มีบุคคลภายนอกที่ไม่ใช่กรรมการของบริษัทเป็นกรรมการตรวจสอบด้วยก็ได้ โดยร่วมประชุมเป็นส่วนหนึ่งของคณะกรรมการบริษัท หรือแยกเป็นคณะกรรมการตรวจสอบต่างหากอีกคณะหนึ่งก็ได้ ซึ่งอาจรวมถึงการกำหนดอำนาจหน้าที่ของกรรมการตรวจสอบ และหลักเกณฑ์และวิธีการใดๆ ที่เกี่ยวข้องกับการปฏิบัติหน้าที่ เป็นต้น กรรมการตรวจสอบต้องเป็นบุคคลธรรมดาตั้งแต่หนึ่งคนขึ้นไปมีหน้าที่ตรวจสอบการดำเนินการทั้งปวงของบริษัท รวมถึงความเกี่ยวโยงกับกิจการอื่นที่เกี่ยวข้องกับบริษัทและการให้คำปรึกษา ทั้งนี้เพื่อประโยชน์ของบริษัท

มาตรา 27 เว้นแต่จะมีบทบัญญัติไว้ในพระราชบัญญัตินี้เป็นอย่างอื่น ความเกี่ยวพันระหว่างกรรมการ กับบริษัท และบริษัทกับบุคคลภายนอก ให้เป็นไปตามประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยตัวแทน

หมวด 4
การจ่ายเงินปันผล

มาตรา 28 การจ่ายเงินปันผลจากเงินประเภทอื่นนอกจากเงินกำไรจะกระทำมิได้ ในกรณีที่บริษัทยังมียอดขาดทุนสะสมอยู่ ห้ามมิให้จ่ายเงินปันผล

บริษัทอาจจ่ายเงินปันผลให้แก่เจ้าของบริษัทได้ เมื่อกรรมการเห็นว่ามีกำไรเพียงพอที่จะจ่ายได้

มาตรา 29 บริษัทต้องจัดสรรกำไรสุทธิประจำปีส่วนหนึ่งไว้เป็นทุนสำรองไม่น้อยกว่าร้อยละห้า ของกำไรสุทธิประจำปีหักด้วยยอดเงินขาดทุนสะสมยกมา (ถ้ามี) จนกว่าทุนสำรองนี้จะมีจำนวนไม่น้อยกว่าร้อยละสิบของทุนจดทะเบียน เว้นแต่บริษัทจะมีข้อบังคับหรือกฎหมายอื่นกำหนดให้ต้องมีทุนสำรองมากกว่านั้น

มาตรา 30 ในกรณีที่บริษัทจ่ายเงินปันผลให้เจ้าของบริษัทโดยฝ่าฝืนมาตรา 28 หรือ มาตรา 29 เป็นเหตุให้เจ้าหนี้ของบริษัทเสียเปรียบ เจ้าหนี้จะฟ้องเจ้าของบริษัทให้คืนเงินปันผลที่ได้รับไปแล้วก็ได้ โดยต้องฟ้องภายในหนึ่งปีนับแต่เวลาที่เจ้าหนี้ทราบถึงการจ่ายเงินปันผล หรือสิบปีนับแต่วันที่จ่ายเงินปันผล

หมวด 5
การเพิ่มทุนและการลดทุน

มาตรา 31 บริษัทอาจเพิ่มทุน หรือลดทุนของบริษัทจากจำนวนที่จดทะเบียนไว้แล้วได้ ด้วยความเห็นชอบของเจ้าของบริษัทตามหลักเกณฑ์และวิธีการที่อธิบดีประกาศกำหนด และต้องนำความมาจดทะเบียนภายในสิบสี่วันนับแต่วันที่ได้รับความเห็นชอบ

มาตรา 32 อันทุนของบริษัทนั้นจะลดลงไปให้ถึงต่ำกว่าจำนวนหนึ่งในสี่ของทุนทั้งหมดไม่ได้ เมื่อบริษัทประสงค์จะลดทุน ต้องโฆษณาความประสงค์นั้นในหนังสือพิมพ์อย่างน้อยหนึ่งคราวและต้องมีหนังสือบอกกล่าวไปยังบรรดาผู้ซึ่งบริษัทรู้ว่าเป็นเจ้าหนี้ของบริษัท บอกให้ทราบรายการซึ่งประสงค์จะลดทุนลงและขอให้เจ้าหนี้ผู้มีข้อคัดค้านอย่างหนึ่งอย่างใดในการลดทุนนั้นส่งคำคัดค้านไปภายในสิบสี่วันนับแต่วันที่บอกกล่าวนั้น

ถ้าไม่มีผู้ใดคัดค้านภายในกำหนดเวลาสิบสี่วัน ก็ให้พึงถือว่าไม่มีการคัดค้าน
ถ้าหากมีเจ้าหนี้คัดค้าน บริษัทจะจัดการลดทุนลงไม่ได้ จนกว่าจะได้ใช้หนี้หรือให้ประกันเพื่อหนี้รายนั้นแล้ว

หมวด 6
การแปรสภาพเป็นบริษัทจำกัด

มาตรา 33 บริษัทอาจปรับโครงสร้างการลงทุนโดยการแปรสภาพเป็นบริษัทจำกัด ดังนี้
(๑) จัดหาผู้ร่วมลงทุนหรือผู้ถือหุ้นให้ครบเป็นองค์ประกอบในการจัดตั้งบริษัทจำกัด
(๒) แจ้งความประสงค์ที่จะแปรสภาพเป็นบริษัทจำกัด โดยประกาศโฆษณาในหนังสือพิมพ์แห่งท้องที่อย่างน้อยหนึ่งคราว และมีหนังสือบอกกล่าวไปยังบรรดาผู้ซึ่งรู้ว่าเป็นเจ้าหนี้ของบริษัทบอกให้ทราบรายการที่ประสงค์จะปรับโครงสร้างการลงทุนเป็นบริษัทจำกัด และขอให้เจ้าหนี้ผู้มีข้อคัดค้านอย่างหนึ่งอย่างใดในการปรับโครงสร้างการลงทุนเป็นบริษัทจำกัดนั้นส่งคำคัดค้านไปภายในสามสิบวันนับแต่วันที่บอกกล่าวนั้น
ถ้ามีการคัดค้านบริษัทจะปรับโครงสร้างการลงทุนมิได้จนกว่าจะได้ชำระหนี้หรือให้ประกันเพื่อหนี้นั้นแล้ว

มาตรา 34 ในกรณีไม่มีการคัดค้านหรือมีการคัดค้านแต่บริษัทได้ชำระหนี้หรือให้ประกันเพื่อหนี้นั้นแล้ว ให้จัดประชุมผู้ร่วมลงทุนดำเนินการในเรื่องดังต่อไปนี้
(๑) กำหนดจำนวนหุ้นสามัญหรือหุ้นบุริมสิทธิ รวมทั้งกำหนดสภาพ และบุริมสิทธิของหุ้นซึ่งจะออกและจัดสรรหุ้นของบริษัทที่แปรสภาพให้แก่ผู้ถือหุ้นของบริษัทจำกัด
(๒) ชื่อของบริษัทจำกัดที่แปรสภาพ โดยจะใช้ชื่อใหม่หรือจะใช้ชื่อเดิมของบริษัทที่แปรสภาพก็ได้0
(๓) วัตถุประสงค์ของบริษัทจำกัด
(๔) ทุนของบริษัทจำกัด โดยจะต้องมีทุนไม่น้อยกว่าทุนชำระแล้วของบริษัทที่แปรสภาพ
(๕) หนังสือบริคณห์สนธิของบริษัทที่จำเป็นต้องแก้ไข ทั้งนี้ จะมีการแก้ไขเพิ่มทุนของบริษัทจำกัดภายหลัง แปรสภาพแล้วด้วยก็ได้
(๖) ข้อบังคับของบริษัทจำกัด
(๗) เลือกตั้งกรรมการของบริษัทจำกัด
(๘) เลือกตั้งผู้สอบบัญชีของบริษัทจำกัด
(๙) เรื่องอื่นๆ ที่จำเป็นในการแปรสภาพ (ถ้ามี)0
ในการดำเนินการตามวรรคหนึ่ง ให้นำบทบัญญัติเกี่ยวกับบริษัทจำกัดตามประมวลกฎหมายแพ่งและพาณิชย์ ว่าด้วยการนั้นๆ มาใช้บังคับโดยอนุโลม

มาตรา 35 ให้กรรมการบริษัทเดิมต้องส่งมอบกิจการ ทรัพย์สิน บัญชีเอกสารและหลักฐานต่างๆ ของบริษัทให้แก่คณะกรรมการบริษัทจำกัดภายในสิบสี่วันนับแต่วันที่ได้ดำเนินการในเรื่องต่างๆ ตามมาตรา 34 เสร็จสิ้นแล้ว
ในกรณีที่เจ้าของบริษัทยังไม่ได้โอนกรรมสิทธิ์ทรัพย์สิน หรือทำเอกสารหลักฐานการใช้สิทธิต่างๆ ให้แก่บริษัท ให้คณะกรรมการบริษัทจำกัดมีหนังสือแจ้งให้โอนกรรมสิทธิ์หรือทำเอกสารหลักฐานการใช้สิทธิต่างๆ แล้วแต่กรณีให้แก่คณะกรรมการบริษัทจำกัดภายในสามสิบวันนับแต่วันที่ได้รับหนังสือแจ้ง

มาตรา 36 คณะกรรมการบริษัทจำกัดต้องขอจดทะเบียนแปรสภาพเป็นบริษัทจำกัดต่อนายทะเบียนตามประมวลกฎหมายแพ่งและพาณิชย์ ภายในสิบสี่วันนับแต่วันที่ได้ดำเนินการตามมาตรา 35 ครบถ้วนแล้ว

ในการขอจดทะเบียนเป็นบริษัทจำกัด คณะกรรมการบริษัทจำกัดต้องยื่นรายงานการประชุมแปรสภาพเป็นบริษัทจำกัดตามมาตรา 34 หนังสือบริคณห์สนธิ ข้อบังคับ และบัญชีรายชื่อผู้ถือหุ้นพร้อมกับการขอ จดทะเบียนด้วย 9 27.11.58

มาตรา 37 เมื่อนายทะเบียนตามประมวลกฎหมายแพ่งและพาณิชย์ ได้รับจดทะเบียนเป็นบริษัทจำกัดแล้ว ให้บริษัทเดิมหมดสภาพการเป็นบริษัทตามพระราชบัญญัตินี้และให้นายทะเบียนหมายเหตุไว้ในทะเบียน

บริษัทจำกัดย่อมได้ไปทั้งทรัพย์สิน หนี้ สิทธิ และความรับผิดของบริษัทเดิมทั้งหมด

หมวด 7

การเลิกบริษัท

มาตรา 38 บริษัทย่อมเลิกกันด้วยเหตุดังต่อไปนี้

(๑) เมื่อเจ้าของบริษัทตาย เว้นแต่บริษัทตกทอดเป็นมรดกแก่ทายาทตามประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 6 มรดก และทายาทประสงค์จะดำเนินธุรกิจต่อไป

(๒) เมื่อเจ้าของบริษัทล้มละลาย หรือตกเป็นคนไร้ความสามารถ

(3) เมื่อสิ้นกำหนดเวลา หรือเมื่อมีกรณีหรือมีเงื่อนไข ตามที่ระบุในรายการจดทะเบียนเกิดขึ้นให้เป็นเหตุเลิกบริษัท และเจ้าของบริษัทไม่เห็นชอบให้มีการขยายกำหนดเวลาออกไป

(4) ศาลสั่งให้เลิกบริษัทตามที่มีผู้ร้องขอ เพราะไม่เริ่มทำการภายในปีหนึ่งนับแต่วันจดทะเบียนหรือหยุดทำการถึงปีหนึ่งเต็ม หรือตามที่กฎหมายอื่นกำหนด

(5) เจ้าของบริษัทมีความประสงค์ให้เลิก

(6) นายทะเบียนสั่งให้เลิก

(7) เหตุอื่นใดตามกฎหมายนี้ หรือกฎหมายอื่น

ทั้งนี้ ให้นำความมาจดทะเบียนเลิกภายในสิบสี่วันนับแต่วันที่มีเหตุตามวรรคหนึ่งแล้วแต่กรณี

มาตรา 39 ในการเลิกบริษัท จะต้องมีการตั้งผู้ชำระบัญชี กรณีมีข้อบังคับกำหนดผู้ชำระบัญชีไว้ หรือศาลมีคำสั่งตั้งผู้ชำระบัญชี ให้ผู้นั้นเป็นผู้ชำระบัญชี

กรณีไม่มีการตั้งผู้ชำระบัญชีไว้ ให้กรรมการด้วยความยินยอมของเจ้าของบริษัท เป็นผู้ชำระบัญชี

กรณีเจ้าของบริษัทไม่แต่งตั้งผู้ใดเป็นผู้ชำระบัญชี ให้เจ้าของบริษัทเป็นผู้ชำระบัญชี

มาตรา 40 เมื่อมีการเลิกบริษัท ให้คณะกรรมการส่งมอบทรัพย์สิน บัญชี และเอกสารหลักฐานต่างๆทั้งหมดของบริษัทให้แก่ผู้ชำระบัญชีภายในเจ็ดวันนับแต่วันเลิก

มาตรา 41 การเลิกบริษัทให้มีผลนับแต่วันที่นายทะเบียนรับจดทะเบียนเลิก แต่ถ้าการชำระบัญชียังไม่เสร็จ ให้ถือว่าบริษัทยังดำรงอยู่เท่าเวลาที่จำเป็นเพื่อการชำระบัญชี

มาตรา 42 ในกรณีที่บริษัทเลิกโดยเหตุอื่นนอกจากเหตุล้มละลาย ให้จัดการชำระบัญชีตามบทบัญญัติแห่งประมวลกฎหมายแพ่งและพาณิชย์เท่าที่ไม่ขัดต่อบทบัญญัติแห่งพระราชบัญญัตินี้ และที่อธิบดีประกาศกำหนด

หมวด 8
การถอนทะเบียนบริษัทร้าง

มาตรา 43 เมื่อปรากฏแก่นายทะเบียนว่าบริษัท มิได้ทำการค้าขาย หรือประกอบการงาน หรือไม่มีตัว ผู้ชำระบัญชีทำการอยู่โดยพฤติการณ์ดังต่อไปนี้

(1) บริษัทใดมิได้ส่งงบการเงินนับแต่ปีปัจจุบันย้อนหลังสามปีติดต่อกัน หรือ

(2) บริษัทที่อยู่ระหว่างชำระบัญชี แต่ผู้ชำระบัญชีมิได้ทำรายงานการชำระบัญชี หรือมิได้ยื่นจดทะเบียนเสร็จการชำระบัญชีให้เสร็จสิ้นภายในสามปีนับแต่วันรับจดทะเบียนเลิกและนายทะเบียนได้ส่งหนังสือทางไปรษณีย์ตอบรับไปยังบริษัทและผู้ชำระบัญชีแจ้งให้ดำเนินการเพื่อให้มีตัวผู้ชำระบัญชี หรือยื่นรายงานการชำระบัญชี หรือจดทะเบียนเสร็จการชำระบัญชีภายในหนึ่งร้อยแปดสิบวันนับแต่วันที่ส่งหนังสือแล้ว แต่ผู้ชำระบัญชีมิได้ปฏิบัติตาม

(3) เหตุอื่นที่เชื่อได้ว่าบริษัทมิได้ประกอบการงาน

ทั้งนี้ เมื่อเป็นพฤติการณ์ตาม (1) หรือ (2) ให้นายทะเบียนขีดชื่อบริษัทนั้นออกจากทะเบียน การเป็นพฤติการณ์ตาม (3) ให้นายทะเบียนมีหนังสือส่งทางไปรษณีย์ตอบรับไปยังบริษัท เพื่อสอบถามว่ายังทำการค้าขายหรือประกอบการงานอยู่หรือไม่ และแจ้งว่าหากมิได้รับคำตอบภายในสามสิบวันนับแต่วันที่ส่งหนังสือ จะได้โฆษณาในหนังสือพิมพ์เพื่อขีดชื่อนิติบุคคลนั้นออกเสียจากทะเบียน ถ้านายทะเบียนได้รับคำตอบจากบริษัทนั้นว่า มิได้ ทำการค้าขายหรือประกอบการงานแล้ว หรือมิได้รับคำตอบภายในสามสิบวันนับแต่วันที่ส่งหนังสือ ให้นายทะเบียนโฆษณาในหนังสือพิมพ์แห่งท้องที่อย่างน้อยหนึ่งคราวและส่งหนังสือบอกกล่าวทางไปรษณีย์ตอบรับไปยังบริษัทว่า เมื่อพ้นเวลาเก้าสิบวันนับแต่วันที่ส่งหนังสือบอกกล่าวบริษัทนั้นจะถูกขีดชื่อออกจากทะเบียน เว้นแต่จะแสดงเหตุให้เห็นเป็นอย่างอื่น

มาตรา 44 เมื่อสิ้นกำหนดเวลาที่แจ้งในหนังสือบอกกล่าวตามมาตรา 43 แล้ว และบริษัทหรือผู้ชำระบัญชีมิได้แสดงเหตุให้เห็นเป็นอย่างอื่น นายทะเบียนจะขีดชื่อบริษัทนั้นออกจากทะเบียนก็ได้ ในการนี้ให้บริษัทนั้น สิ้นสภาพความเป็นนิติบุคคลตั้งแต่เมื่อนายทะเบียนขีดชื่อออกจากทะเบียน แต่ความรับผิดของกรรมการ และเจ้าของบริษัทมีอยู่เท่าไรก็ให้คงมีอยู่อย่างนั้นและจะเรียกบังคับได้เสมือนบริษัทนั้นยังมิได้สิ้นสภาพนิติบุคคล

มาตรา 45 ในระหว่างการดำเนินการถอนทะเบียนบริษัทร้าง หากปรากฏข้อเท็จจริงดังต่อไปนี้ ให้นายทะเบียนพิจารณาระงับการขีดชื่อบริษัทออกจากทะเบียน

(๑) ภายในสามสิบวันนับแต่วันที่ส่งหนังสือสอบถามการประกอบการงาน ถ้านายทะเบียนได้รับคำตอบจากบริษัทเป็นหนังสือว่ายังคงทำการค้าหรือประกอบการงานอยู่

(๒) ภายในหนึ่งร้อยแปดสิบวันนับแต่วันที่ส่งหนังสือแจ้งให้ดำเนินการเพื่อให้มีตัวผู้ชำระบัญชี หรือ ยื่นรายงานการชำระบัญชีหรือจดทะเบียนเสร็จการชำระบัญชี ถ้าบริษัทหรือผู้ชำระบัญชีดำเนินการให้มีตัวผู้ชำระบัญชีหรือยื่นรายงานการชำระบัญชีหรือจดทะเบียนเสร็จการชำระบัญชีแล้วแต่กรณี

(๓) บริษัทแสดงหลักฐานให้เห็นว่ามีเหตุอื่นที่ไม่อาจขีดชื่อออกจากทะเบียนได้เมื่อพ้นระยะเวลาตาม (๑) หรือ (๒) แล้ว

(๔) บริษัทไม่มีที่ตั้งสำนักงานแห่งใหญ่ตามที่จดทะเบียนไว้ แต่ในระหว่างดำเนินการได้มาจดทะเบียนแก้ไขเพิ่มเติมที่ตั้งสำนักงานแห่งใหญ่

(๕) มีการส่งงบการเงิน

(๖) มีการจดทะเบียนเปลี่ยนแปลงรายการทางทะเบียนหรือยื่นเอกสารอื่นที่เกี่ยวข้องทางทะเบียนของบริษัท

(๗) มีการจดทะเบียนเปลี่ยนแปลงรายการทางทะเบียนเกี่ยวกับผู้ชำระบัญชีหรือสำนักงานของผู้ชำระบัญชี หรือยื่นเอกสารอื่นที่เกี่ยวข้องทางทะเบียนของบริษัทครั้งสุดท้ายถึงวันที่ตรวจสอบไม่เกิน ๓ ปี

(8) บริษัทได้เปลี่ยนโครงสร้างเป็นบริษัทจำกัด หรืออยู่ในระหว่างดำเนินการจดทะเบียนเปลี่ยนโครงสร้างเป็นบริษัทจำกัด

(9) มีการยื่นขอจดทะเบียนเลิกบริษัทต่อนายทะเบียน ทั้งนี้ ไม่ว่านายทะเบียนจะได้รับจดทะเบียนเลิกบริษัทนั้นแล้วหรือไม่

(10) บริษัทได้ถูกศาลพิพากษาหรือมีคำสั่งให้ล้มละลาย พิทักษ์ทรัพย์ชั่วคราว หรือพิทักษ์ทรัพย์เด็ดขาด หรือมีคำสั่งอื่นตามกฎหมายล้มละลาย

(๑1) ศาลมีคำสั่งรับคำร้องฟื้นฟูกิจการหรืออยู่ในระหว่างดำเนินการตามแผนฟื้นฟูกิจการ

(๑2) มีหลักฐานเป็นหนังสือแจ้งต่อนายทะเบียนว่าบริษัทอยู่ในระหว่างการฟ้องร้องดำเนินคดีหรือศาล มีคำสั่งห้ามมิให้นายทะเบียนรับจดทะเบียนเป็นการชั่วคราว หรือมีคำสั่งศาลในทำนองเดียวกัน หรือมีการคัดค้านการจดทะเบียน

มาตรา 46 ถ้าบริษัท เจ้าของบริษัท หรือเจ้าหนี้ใดๆ ของบริษัทนั้นรู้สึกว่าต้องเสียหายโดยไม่เป็นธรรม เพราะการที่บริษัทถูกขีดชื่อออกจากทะเบียน เมื่อบริษัท เจ้าของบริษัท หรือเจ้าหนี้ ยื่นคำร้องต่อศาล และศาลพิจารณาได้ความเป็นที่พอใจว่าในขณะที่ขีดชื่อบริษัทออกจากทะเบียน บริษัทยังทำการค้าขายหรือยังประกอบการงานอยู่ หรือเห็นเป็นการยุติธรรมในการที่จะให้บริษัทได้กลับคืนสู่ทะเบียนก็ดี ศาลจะสั่งให้จดชื่อบริษัทกลับคืน สู่ทะเบียนก็ได้ และให้ถือว่าบริษัทนั้นยังคงอยู่ตลอดมาเสมือนมิได้มีการขีดชื่อออกเลย โดยศาลจะสั่งเป็นประการใดๆ ที่เห็นเป็นการยุติธรรมก็ได้ เพื่อให้บริษัทและบรรดาบุคคลอื่นๆ กลับคืนสู่ฐานะอันใกล้ที่สุดกับฐานะเดิมเสมือนบริษัทนั้นมิได้ถูกขีดชื่อออกจากทะเบียนเลย

การร้องขอให้บริษัทกลับคืนสู่ทะเบียน ห้ามมิให้ร้องขอเมื่อพ้นกำหนดสิบปีนับแต่วันที่นายทะเบียนขีดชื่อบริษัทออกจากทะเบียน

หมวด 9
บทกำหนดโทษ

มาตรา 47 บุคคลใดให้ความช่วยเหลือ สนับสนุน หรือร่วมประกอบธุรกิจ หรือมีอำนาจครอบงำกิจการ หรือมีอำนาจควบคุมบริษัท โดยแสดงออกว่าเป็นธุรกิจของตนแต่เพียงผู้เดียว หรือลงทุนแทนคนต่างด้าว เพื่อให้ คนต่างด้าวประกอบธุรกิจโดยหลีกเลี่ยง หรือฝ่าฝืนกฎหมายว่าด้วยการประกอบธุรกิจของคนต่างด้าว รวมทั้งผู้ซึ่งยินยอมให้บุคคลใดกระทำการดังกล่าว ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับตั้งแต่หนึ่งแสนบาทถึงหนึ่งล้านบาท หรือทั้งจำทั้งปรับ และให้ศาลสั่งเลิก

บริษัท หากฝ่าฝืนไม่ปฏิบัติตามคำสั่งศาล ต้องระวางโทษปรับวันละหนึ่งหมื่นบาทถึงห้าหมื่นบาท ตลอดเวลาที่ยังฝ่าฝืนอยู่

มาตรา 48 บริษัทใดไม่ปฏิบัติตามมาตรา 7 หรือมาตรา 14 ต้องระวางโทษปรับไม่เกินสองหมื่นบาท

มาตรา 49 กรรมการใดของบริษัทไม่ปฏิบัติตามมาตรา 12 วรรคสอง มาตรา 13 วรรคสอง หรือมาตรา 23 วรรคหนึ่ง ต้องระวางโทษปรับไม่เกินสองหมื่นบาท

มาตรา 50 ผู้ทำบัญชีผู้ใดไม่ปฏิบัติตามมาตรา 23 ต้องระวางโทษปรับไม่เกินห้าพันบาท

มาตรา 51 ผู้มีหน้าที่จัดทำบัญชีผู้ใดไม่ปฏิบัติตามมาตรา 24 ต้องระวางโทษปรับไม่เกินสองหมื่นบาท

มาตรา 52 บริษัทใดจ่ายเงินปันผลโดยฝ่าฝืนมาตรา 28 หรือมาตรา 29 ต้องระวางโทษปรับไม่เกิน สองหมื่นบาท

มาตรา 53 บริษัทใดไม่จดทะเบียนตามมาตรา 31 ต้องระวางโทษปรับไม่เกินสองหมื่นบาท

มาตรา 54 บริษัทใดไม่โฆษณาหรือไม่มีหนังสือบอกกล่าวความประสงค์จะลดทุนตามมาตรา 32 วรรคสอง หรือจัดการลดทุนโดยฝ่าฝืนมาตรา 32 วรรคสี่ ต้องระวางโทษปรับไม่เกินห้าหมื่นบาท กรรมการต้องระวางโทษปรับไม่เกินห้าหมื่นบาท

มาตรา 55 กรรมการหรือผู้ชำระบัญชีของบริษัทใด โดยทุจริต แสดงออกซึ่งความเท็จหรือปกปิดความจริง ซึ่งควรบอกให้แจ้งแก่เจ้าของบริษัทในเรื่องฐานะการเงินของบริษัทนั้น ต้องระวางโทษปรับไม่เกินห้าหมื่นบาท

มาตรา 56 บุคคลใดซึ่งรับผิดชอบในการดำเนินงานของบริษัทเอาไปเสีย ทำให้เสียหาย ทำลาย ทำให้เสื่อมค่าหรือทำให้ไร้ประโยชน์ ซึ่งทรัพย์สินอันบริษัทดังกล่าวจำนำไว้ ถ้าได้กระทำเพื่อให้เกิดความเสียหายแก่ผู้รับจำนำ ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ

มาตรา 57 บุคคลใดซึ่งรับผิดชอบในการดำเนินงานของบริษัทรู้ว่าเจ้าหนี้ของบริษัท หรือเจ้าหนี้ของบุคคลอื่นซึ่งจะใช้สิทธิเรียกร้องของเจ้าหนี้ของบริษัทในการบังคับชำระหนี้จากบริษัท ใช้หรือน่าจะใช้สิทธิเรียกร้องทางศาลให้ชำระหนี้

(1) ย้าย ซ่อน หรือโอนให้แก่ผู้อื่นซึ่งทรัพย์สินของบริษัท หรือ

(2) แกล้งให้บริษัทเป็นหนี้ซึ่งไม่เป็นความจริง

ถ้าได้กระทำเพื่อมิให้เจ้าหนี้ได้รับชำระหนี้ทั้งหมดหรือแต่บางส่วน ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ

มาตรา 58 บุคคลใดซึ่งรับผิดชอบในการดำเนินงานของบริษัทใดกระทำการหรือไม่กระทำการ เพื่อแสวงหาประโยชน์ที่มิควรได้โดยชอบด้วยกฎหมายเพื่อตนเองหรือผู้อื่นอันเป็นการเสียหายแก่บริษัทนั้น ต้องระวางโทษปรับไม่เกินห้าหมื่นบาท

มาตรา 59 บุคคลใดซึ่งรับผิดชอบในการดำเนินงานของบริษัท กระทำการหรือยินยอมให้กระทำการดังต่อไปนี้

(1) ทำให้เสียหาย ทำลาย เปลี่ยนแปลง ตัดทอน หรือปลอมบัญชี เอกสาร หรือหลักประกันของบริษัทหรือที่เกี่ยวกับบริษัท หรือ

(2) ลงข้อความเท็จ หรือ ไม่ลงข้อความสำคัญในบัญชีหรือเอกสารของบริษัท หรือที่เกี่ยวกับบริษัท ถ้ากระทำหรือยินยอมให้กระทำเพื่อลวงให้บริษัทหรือเจ้าของบริษัทขาดประโยชน์อันควรได้ ต้องระวางโทษจำคุกไม่เกินเจ็ดปี หรือปรับไม่เกินหนึ่งแสนสี่หมื่นบาท หรือทั้งจำทั้งปรับ

มาตรา 60 ผู้ใดใช้ชื่อหรือยี่ห้อซึ่งมีอักษรไทยว่า “บริษัท...จำกัด (คนเดียว)” หรืออักษรต่างประเทศซึ่งมีความหมายดังกล่าวประกอบในจดหมาย ประกาศ ใบแจ้งความ ใบส่งของ ใบเสร็จรับเงินหรือเอกสารอย่างอื่นเกี่ยวกับกิจการของบริษัท โดยมิได้เป็นบริษัท เว้นแต่เป็นการใช้ในการขอจดทะเบียนเกี่ยวกับการจัดตั้งบริษัท ต้องระวางโทษปรับไม่เกินสองหมื่นบาท และปรับอีกวันละไม่เกินห้าร้อยบาท จนกว่าจะเลิกใช้หรือจนกว่าจะได้ปฏิบัติให้ถูกต้อง แล้วแต่กรณี

มาตรา 61 ผู้ใดโฆษณาโดยอ้างถึงบุคคล ตำแหน่งหน้าที่ บัญชี รายงาน หรือกิจการอันเกี่ยวกับบริษัทอันเป็นเท็จในสาระสำคัญ หรือปกปิดข้อความอันเป็นสาระสำคัญ เพื่อ

(1) ลวงผู้มีส่วนได้เสียในบริษัทนั้นให้ขาดประโยชน์อันควรได้จากบริษัทนั้น หรือ

(2) จูงใจบุคคลให้มอบหมายหรือส่งทรัพย์สินให้แก่บริษัทนั้น หรือให้เข้าเป็นผู้ค้ำประกันหรือให้ทรัพย์สินเป็นประกันบริษัทนั้น

ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ

มาตรา 62 ผู้ใดโดยทุจริตกำหนดค่าทรัพย์สินที่นำมาลงในบริษัทสูงกว่ามูลค่าที่แท้จริง ต้องระวางโทษปรับไม่เกินห้าหมื่นบาท

มาตรา 63 ในกรณีที่บริษัทเป็นผู้กระทำความผิดและถูกลงโทษตามพระราชบัญญัตินี้ กรรมการ หรือผู้แทนบริษัท ซึ่งรู้เห็นเป็นใจกับการกระทำความผิดนั้น หรือซึ่งมิได้จัดการตามสมควรเพื่อป้องกันมิให้เกิดความผิดนั้น ต้องรับโทษตามที่บัญญัติไว้สำหรับความผิดนั้นๆ ด้วย

มาตรา 64 บรรดาความผิดตามพระราชบัญญัตินี้ที่มีโทษปรับสถานเดียวให้อธิบดีหรือผู้ซึ่งอธิบดีมอบหมายมีอำนาจเปรียบเทียบได้ เมื่อผู้กระทำความผิดได้ชำระเงินค่าปรับตามจำนวนที่เปรียบเทียบภายในระยะเวลาที่กำหนดแล้ว ให้ถือว่าคดีเลิกกันตามประมวลกฎหมายวิธีพิจารณาความอาญา

ถ้าผู้กระทำความผิดไม่ยินยอมตามที่เปรียบเทียบหรือเมื่อยินยอมแล้วไม่ชำระเงินค่าปรับภายในเวลาที่กำหนด ให้ดำเนินคดีต่อไป 14 27.11.58

<u>อัตราค่าธรรมเนียม</u>

(1) การจดทะเบียนบริษัท		2,000 บาท
(2) การจดทะเบียนแก้ไขเพิ่มเติมข้อบังคับ		500 บาท
(3) การจดทะเบียนเพิ่มทุน		500 บาท
(4) การจดทะเบียนลดทุน		500 บาท
(5) การจดทะเบียนเลิกบริษัท		500 บาท
(6) การจดทะเบียนเรื่องอื่นๆ	เรื่องละ	500 บาท
(7) การออกใบสำคัญหรือใบแทนใบสำคัญแสดงการจดทะเบียน	ฉบับละ	200 บาท
(8) การตรวจเอกสาร	ครั้งละ	100 บาท

(9) การขอสำเนาหรือขอให้ถ่ายเอกสารพร้อมทั้งคำรับรอง	ฉบับละ	100 บาท
(10) การรับรองข้อความในทะเบียน	เรื่องละ	100 บาท

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Publication

Natcha Rattaphan, *Legal Issues on Creditors' Rights and Protections in Single Member Companies* (A Thesis for the Degree of Master of Laws in Business Laws (English Programs, Thammasat University, 2016)