

## 1. Introduction

Thai company law is undergoing significant changes. The Act Amending the Civil and Commercial Code (No. 18) B.E. 2551 (2008), which was published in the Government Gazette on 3 March 2008 and will enter into force on 1 July 2008 ("Effective Date"), is arguably the most important revision of Thai company law in 80 years<sup>2</sup>. Predominantly, the Act reduces the number of shareholders in a company, allows a company to be set up more quickly through the one-day incorporation alternative<sup>3</sup> and shortens the notice periods for a reduction in the registered capital and the dissolution of a company. Additionally, a registered partnership may, after the Effective Date, be converted into a limited liability company.

These amendments are in line with the reforms of company laws that are taking place in other parts of the world. Many countries, including the China, Japan, Pakistan, Qatar, Sweden and the United Kingdom have passed new laws to modernise and create more efficient regulations for their companies. In the UK, whose company law was a model for the partnerships and companies provisions of the Civil and

Commercial Code ("CCC") of Thailand (and the progenitor of most corporate laws all over the world) when the CCC was drafted more than 80 years ago, the Companies Act 2006 is said to be the biggest shake-up of UK company law in 30 years. Like many of its European and Asian counterparts, the new Act has simplified company formations and meeting procedures. In addition, the Companies Act 2006 has removed the requirement for a company secretary, enhanced shareholder rights and for the first time codified directors' duties owed to a company. Expected to be fully implemented by October 2008, it is estimated that the new UK Companies Act will save businesses up to £250 million a year, £100 million of which represents benefits for small companies.

In China, the amendment which came into effect on 1 January 2006 is also a significant reform of Chinese company law. In addition to simplifying company establishment requirements, the amendment also statutorily expands the rights of shareholders to strengthen corporate governance and investor confidence. As one author puts it, although the revisions do not make it much easier for foreigners to invest in

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<sup>2</sup> With the exception of the enactment of the Public Companies Act, B.E. 2535 (1992), since the CCC entered into effect in 1925, there have been a few minor changes (through four revisions) to the provisions on companies.

<sup>3</sup> The new Section 1111/1 has been added making it possible to complete the incorporation of a company in one day. It provides that the directors of the to-be-formed company can now apply for the registration of the Memorandum of Association and the registration of the company on the same day, provided that all of the required establishment procedures, such as the allocation of shares and the calling of a Statutory Meeting, are completed within the day of registration of the Memorandum of Association and the company.

China, they effectively modernise legislation that was drafted to give primacy to government control rather than corporate autonomy. Most importantly, the revisions generally signal a move by the Chinese government towards the types of corporate entities seen in the West. Most eye-catching is the lifting of the ban on the setting-up of one-person limited companies, which is warmly welcomed by the business community.

Japan's new company law, which became effective in May 2006, has also simplified incorporation procedures and enhanced corporate governance. In addition, it has provided greater flexibility for investors through a greater variety of corporate forms. Japan has, in effect, "upgraded its laws for the next stage of development of the economy and capital markets."<sup>4</sup>

The above developments show that governments around the world are amending their company laws so that they are more in tune with the needs of businesses. The reason for this is obvious. Companies, especially small and medium-sized companies, are a major driving force of every economy. Therefore, it is important to modernise company law to facilitate the incorporation and running of companies. The reason is that if the law makes it difficult and expensive to set up a company and the procedures for running it too burdensome and costly, it would ineluctably hamper the growth of trade and business, impede innovations and stifle the economy. Undeniably, companies are the most important mechanism by which people do their business. Through the separate legal

personality enjoyed by a company, entrepreneurship is encouraged, as the risk of business failure is shifted away from entrepreneurs to creditors and other risk bearers (subject to exceptions in different jurisdictions known as 'lifting' or 'piercing the corporate veil'). For this reason, carrying on business in a corporate form has been very popular among entrepreneurs around the world and at the same time a concern for some governments worried about abuse of corporate personality. This is precisely why single-person companies are possible in some jurisdictions and not others.

All of the above-mentioned countries that have recently implemented a company law reform, with the exception of Thailand, have introduced a one-person company into their legal system. So, naturally, as a Thai person, I question why this is the case. After discussing the changes introduced by the Act Amending the Civil and Commercial Code and their effects, I will analyse the legal and practical reasoning behind the reduction of the number of persons required to set up a company, the issue of single-person companies and whether they should and could have been introduced in Thailand in line with the global trend.

## **2. Amendments to the CCC: a major step forward**

There is no doubt that the changes to Thailand's company laws are generally desirable. As stated at the end of the Act Amending the CCC, the reasons behind the changes are that the provisions on partnerships and companies in the CCC have been in force for a long period of

<sup>4</sup> [http://www.jetro.org/documents/event\\_documents/173/173\\_ACCJ\\_BENES\\_6-30-06\\_1.pdf](http://www.jetro.org/documents/event_documents/173/173_ACCJ_BENES_6-30-06_1.pdf)

time and certain provisions have imposed undue burdens on the public, leading to unnecessary complexity, duplication of procedures and delay in the discharge of the government authorities' functions. In addition, the Act states that certain provisions were an obstacle to the country's competitiveness. Therefore, to deal with such problems and to enable partnerships and companies to operate with more flexibility, it was deemed necessary to enact this Act.

As will be seen below, the amendments are indeed another important step forward for Thailand's company laws. Now, not only will setting up a company be more convenient and less time consuming, but running it will also be easier, as a number of procedures have been relaxed. There is also good news for shareholders, whose rights are now better protected the Act. Details of some of the important changes introduced by the Act are discussed below.

#### *Number of promoters and shareholders*

The number of promoters (i.e. persons who initiate or direct the organisation of a company) required for setting up a private limited company is reduced from at least 7 promoters to at least 3 promoters. As a result, the number of shareholders required for maintaining the status of a company is also reduced from at least 7 shareholders to at least 3 shareholders. If the number of the shareholders is reduced to less than 3, the amendment allows a court to order that the company be dissolved. The effect of this is clear in itself. Now, it will be easier to set up a company, as an individual wishing to operate a

business through a company will no longer have to find as many as 6 other persons (or gather as many as 6 other names) to participate in his or her venture. While this is a major change, it will be argued later in this paper that the legislators did not go far enough.

#### *Setting up a company in one day*

Currently, it takes at least 10 – 14 days to register the incorporation of a company. The amendment will offer an alternative so that the incorporation of a company can be effected within one day. Before the Effective Date, the statutory meeting, which previously had to be held before a company could be registered, could be held only seven days after the registration of the memorandum of association (MoA). Therefore, directors of a new company would have to first register the MoA, wait seven days, hold the prerequisite statutory meeting, and then apply to get the company registered. After the Effective Date, directors of a new company may apply to register the MoA and to incorporate the company on the same day by holding the statutory meeting and subscribing to and paying for shares at the same time. This change is highly desirable because, through this procedure, a company can now be set up more quickly, thus creating more favourable conditions for setting up a business in Thailand.

#### *Notice to convene the shareholders' meeting*

In contrast to other amended provisions, the modification concerning the notice to convene the shareholders' meeting creates an extra obligation on companies. However, it is submitted that this extra obligation is desirable. Currently,

the notice to convene the shareholders' meeting, where ordinary resolutions and/or special resolutions will be passed, has to be either published at least twice in a local newspaper at least 7 days prior to the meeting date or sent to each shareholder whose name appears on the share register at least 7 days prior to the meeting date. In other words, there are two alternatives of giving notice to shareholders regarding the shareholders' meeting, i.e. by sending the notice to shareholders and by publishing in a local newspaper. A company can choose to effect notice by either of these means. Under the amendment, however, both types of notice must be given. From the Effective Date onwards, the notice to convene the shareholders' meeting must be (i) published at least once in a local newspaper at least 7 days prior to the meeting date, and (ii) sent to each shareholder by registered mail at least 7 days prior to the meeting date. If special resolutions will be passed at the meeting, the notice period is 14 days. If the articles of association still provide for the notice period of 7 days, the new legal requirement will undoubtedly prevail.

While some people, including officials at the Ministry of Commerce have expressed concern that the new notice requirements might be too burdensome for companies, the Office of the Council of State, which proposed the change, justified the amendment by arguing that the previous method of allowing companies to choose from the two alternatives provided opportunities for unfair treatment of shareholders. For instance, where there was a conflict among different groups of shareholders, the controlling

shareholders might choose to publish the meeting notice in a less known newspaper or a paper that is not widely distributed. As a result, some shareholders would not know of the meeting and as a consequence might suffer damage and injustice as a result. For this reason, the Council of State found it necessary to require both methods of giving notice to the shareholders' meeting to be observed and the National Legislative Assembly agreed with this.

#### *Passing special resolutions*

A special resolution can now be passed at a single shareholders' meeting by an affirmative vote of 75% of shareholders present and eligible to vote. Before the Effective Date, a company had to convene two consecutive shareholders' meetings and the resolution had to be passed by a vote of 75% or more of the total number of shareholders in the first meeting and a vote of two-thirds or more of the total number of shareholders in the second meeting with a gap of not less than 14 days between meetings.

This change will enable companies to make decisions and proceed with their projects more quickly, although, like the provisions on the giving of notice to attend meetings discussed above, there may be a practical problem where the articles of association are based on the current legal requirements. In such a case, the new provisions will obviously prevail.

#### *Notice requirements*

*Distribution of dividends:* Now, a company must send a written notice of dividend distribution to all shareholders. If the shares are in bearer

form, the company must publish the notice in a local newspaper at least once. In this regard, therefore, shareholders' rights have been strengthened. Prior to the Effective Date, a company may choose whether to inform its shareholders by advertising twice in a local newspaper or sending a written notice to all eligible shareholders and, if the company chooses to only publish the notice in a newspaper, certain shareholders might not be informed of the dividend distribution.

*Reduction of capital:* When a company wishes to reduce its registered capital, the current section 1226 of the CCC requires that the company publish a notice of the capital reduction at least 7 times in a local newspaper and send a notice of the proposed reduction to all creditors known to the company. This notice requires creditors to submit any objections they may have to such reduction within 3 months from the date of the notice.

The amendment reduces the administrative burden and only requires that the company publish a notice of the capital reduction in a local newspaper at least once. In addition, the period of time within which creditors can submit their objections is reduced from three months to 30 days.

*Amalgamation of companies:* Before the Effective Date, a company is required to publish a notice of amalgamation at least 7 times in a local newspaper and send the notice of amalgamation by registered mail to all creditors. This notice requires creditors to submit any objections they may have to such amalgamation within 6 months from the date of the notice.

The amendment reduces the administrative burden and only requires that the company publish a notice of the amalgamation in a local newspaper at least once. In addition, the period of time within which creditors can submit their objections is reduced from six months to 60 days.

*Conversion of a registered ordinary partnership and registered limited partnership into a limited company*

A new chapter has been incorporated into the CCC. This chapter sets out the procedures for converting a registered ordinary partnership and a registered limited partnership into a limited company. A registered ordinary partnership or a registered limited partnership may be converted into a limited company, provided that the partnership has at least three partners and all partners consent to the conversion. Individual partners remain liable for debts incurred prior to conversion into a limited company.

Overall, the changes being introduced are much welcome, as they will create a more modern and efficient set of regulations for Thai companies. However, if the overall objectives of the amendments are to modernise Thai company law and to remove barriers to the competitiveness of the Thai economy, it may be questioned whether and to what extent the adherence to the multi-individual companies will enable such objectives to be achieved.

### **3. From seven to three -what's wrong with one?**

3.1 *Looking out the window – rules on company formation in other jurisdictions*

From the Effective Date onwards, a minimum of 3 persons, instead of 7, will be required to set up a private limited company. As before, there are no minimum capital requirements, although capital value should reflect the nature of the business. An annual general meeting of shareholders is required.

While the reduction from a minimum of 7 to 3 persons may seem like significant progress, a look at company laws in other countries reveals that the requirement for the plurality of shareholders is becoming less and less prevalent. In the UK, Australia, Singapore and Pakistan, a single person is capable of forming a private limited company which may be limited by shares or guarantee. Such single-member companies need to have only one director, who may also be the company secretary. In Singapore (and recently China), the single person may be an individual or a corporation. In the US, several states permit the formation and operation of a single-member Limited Liability Company (LLC).

In India, the draft Companies Bill 2007 has proposed a new entity called a one-person company (OPC) as a measure to provide start-up entrepreneurs and professionals with much-needed flexibility in setting up a business. The onerous compliance requirements that apply to large widely-held companies will not be imposed on such entities.

Apart of the above countries, among states that permit a single-member company, according to the Company Formation Survey 2007<sup>5</sup>, include Anguilla, Antigua, Bahamas, Barbados, British Virgin Islands, Brunei, Cyprus, Gibraltar, Hong Kong, Hungary, Ireland, Jersey, Liberia, Luxembourg, Mauritius, Panama, Singapore, Sweden and Switzerland.

Should and could a single-person company have been introduced in Thailand? My answer would be 'yes' to both questions. As will be seen below, there is a strong argument in favour of permitting the establishment of single-person companies and there are no reasons why one could suggest that Thailand is not ready for such a change.

### *3.2 The attractiveness of a single-person company*

The argument for the single-person companies has been discussed in greater detail elsewhere. Therefore, it suffices to discuss briefly here what the main reasons for such creatures are. As Copperthwaite stated, the most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability. If one person is able to solely establish a company with limited liability, corporatisation of business and entrepreneurship would be encouraged. As one author has stated, single-person companies are imperative because they provide entrepreneurs with an outlet for participation in economic activity and such

<sup>5</sup> <http://www.offshoreinvestment.com/SURVEY/index.html>

<sup>6</sup> Preeti Malhotra, "One-person company is a great prospect for lone entrepreneur", [online] available from: [http://economictimes.indiatimes.com/News/Economy/Policy/One-person\\_company\\_is\\_a\\_great\\_prospect\\_for\\_lone\\_entrepreneur/articleshow/2651202.cms](http://economictimes.indiatimes.com/News/Economy/Policy/One-person_company_is_a_great_prospect_for_lone_entrepreneur/articleshow/2651202.cms) [31 March 2008]

economic activity may take place through the creation of an economic person in the form of a company<sup>6</sup>. Despite this, Thailand still refuses to embrace the concept of a single-person company on both theoretical and practical grounds. In addition to the long embedded idea of a company as a contract, one of the principal legal reasons against the single-person company is the concern of the risks to the creditors. However, it will be argued that the idea of a company as a contract is both theoretically and empirically false. Moreover, the concerns expressed against the single-person companies can be addressed through the adoption of adequate precautions.

### 3.3 A single-person company—a theoretical impossibility?

Section 1012 of the CCC provides that “A contract for the organisation of a partnership or company is a contract by virtue of which two or more persons agree to unite for a common undertaking, with a view to sharing the profits which may be derived therefrom.” Like the original text of the Commercial Companies Act of Qatar, which legalised the single-person company in 2002, the legislator gives the term ‘company’ its normal linguistic and social meaning, i.e. a contract between at least two persons to do business for profit-making purpose.<sup>7</sup> Following this definition, section 1013 goes on to state that “There are three kinds of partnerships or companies. They are:

- (1) Ordinary partnerships;
- (2) Limited partnerships; and
- (3) Limited companies.”

What these forms of business organisations have in common is the plurality of the statutory minimum requirement of partners/shareholders. While (1) and (2) require a minimum of two persons as provided under section 1012, the current section 1097 requires a minimum of seven persons to promote and form a limited company. For a public limited company, a minimum of 15 persons is required<sup>8</sup>. All of these provisions show that Thai law considers a company as a contract whereby there must be “two or more persons” who “agree to unite for a common undertaking.” Therefore, the CCC requires the dissolution of any company if the minimum number of shareholders falls below the statutory requirement. Although the minimum number of persons required to form a limited company has been reduced under the new law, the legislators have stuck to the traditional idea that a company is a contract. As a result, it is not possible even to contemplate the idea of a single-person company under Thai law.

However, it is submitted that such an idea is no longer tenable. Although in legal theory, the term ‘company’ implies “an association of a number of people for some common object or objects”<sup>9</sup>, it is not so in economic reality. Economists look upon the company as a way of

<sup>7</sup> Mosleh Ahmad AlTarawneh, “The ‘single-person’ company in the new amended company law of the state of Qatar”, *Int. J. Liability and Scientific Enquiry*, Vol. 1, Nos. 1/2, 2007

<sup>8</sup> Public Companies Act, B.E. 2535

<sup>9</sup> Paul. L. Davies, *Gower’s Principles of Modern Company Law*, 1997, p. 3

organising capital by a firm, which has acquired distinctive legal attributes. A company in their point of view is a device for personifying a business and, normally, divorcing its liability from that of its members despite the fact that the members retain control and share the profits. It makes no difference, therefore, whether a company is owned by a single trader or a small or large body of partners or shareholders. Company laws and most legal systems have come to respond to this economic analysis by introducing the principles of legal personality of a company and that of limited liability.<sup>10</sup>

In addition, legal thinking behind UK company law, a model for Thai company law, changed almost 20 years ago. Since the implementation in the UK of Council Directive 89/667 on single-member private limited liability companies<sup>11</sup>, a company under UK law need have only one member. Furthermore, for many decades before that the interest in the company of only one of the members might have been more than nominal. Nor indeed does a public "company" automatically cease merely because, in the course of time, the number of members is reduced to one or none.<sup>12</sup>

The idea being advocated here is not simply to follow suit with the UK and other countries in legalising single-member limited companies but to reconsider the meaning of the term 'company' under Thai law in light of the changes that have recently taken place elsewhere in the world. The question is this: Does the term 'company' necessarily require an association of at least two persons? The answer is certainly

'no'. The fundamental characteristic of a company is not the plurality of its founders but the separate legal personality it possesses.

Legal personality refers to the recognition by law that a company, once incorporated, becomes a separate legal entity or personality (O'Connor, 1998). It is a central feature of company law in general that incorporation procedures create a new and separate legal entity, capable of enjoying rights, exercising powers and incurring duties and obligations. The main legal consequences of the company's legal personality include the following.

A company, as a legal person, shall have:

- its own capacity;
- a separate financial status;
- its own name;
- the ability to sue and be sued in its own name;
- its own nationality;
- its own domicile; and
- a company, as a legal person, may be liable in tort.

All companies established under Thai law, naturally, possess such attributes. However, to benefit from the legal personality and limited liability of a company, a person must enlist the aid of others in order to form "a contract for the organisation of a partnership or company" required by law. To modernise Thai company law, to vitalise national business and in view of the existence of *de facto* single-person companies, the idea of a company as a contract should be

<sup>10</sup> Mosleh Ahmad At-Tarawneh, "The 'single-person' company in the new amended company law of the state of Qatar", *Int. J. Liability and Scientific Enquiry*, Vol. 1, Nos. 1/2, 2007

<sup>11</sup> Article 2 (1) of the Directive provides that a company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company).

<sup>12</sup> Paul. L. Davies, *Gower's Principles of Modern Company Law*, 1997, p. 3



obliterated from the thinking of Thai legislators and Thailand should introduce single-person companies into its legislation.

### 3.4 *The existence of de facto single-person companies*

*Salomon v. Salomon & Co. (AC, 1897)*, albeit an English case, is considered the leading case of a comparative argument in favour of the single-person company with full legal personality and full limited liability. Aron Salomon was a successful leather merchant who specialised in manufacturing leather boots. For many years he ran his business as a sole proprietor. By 1892, his sons had become interested in taking part in the business. Salomon decided to incorporate his business as a limited company, *Salomon & Co. Ltd.*

At the time the legal requirement for incorporation was that at least seven persons subscribe as members of a company, i.e. as shareholders. The shareholders were Mr. Salomon, his wife, daughter and four sons. Two of his sons became directors. Mr. Salomon himself was managing director. Mr. Salomon owned 20,001 of the company's 20,007 shares – the remaining six were shared individually between the other six shareholders. Mr. Salomon sold his business to the new corporation for almost £39,000, of which £10,000 was a debt to him. He was thus simultaneously the company's principal shareholder and its principal creditor.

When the company went into liquidation, the liquidator argued that the debentures used by Mr. Salomon as security for the debt were invalid, on the grounds of fraud. Vaughan Williams J. accepted this argument, ruling that since Mr.

Salomon had created the company solely to transfer this business to it, the company was in reality his agent and he as principal was liable for debts to unsecured creditors. The Court of Appeal also ruled against Mr. Salomon, saying that he had abused the privileges of incorporation and limited liability and that the incorporation of the business by Mr. Salomon had been a mere scheme to enable him to carry on business as before but with limited liability.

The House of Lords unanimously overturned this decision, rejecting the arguments of agency and fraud. They held that the company was duly constituted and was at law a different person altogether from the shareholders. There was nothing in the Act about whether the subscribers (i.e. shareholders) should be independent of the majority shareholder. Lord Halsbury stated that the statute “enacts nothing as to the extent or degree of interest which may be held by each of the seven [shareholders] or as to the proportion of interest or influence possessed by one or the majority over the others.”

*Salomon & Co. Ltd.* was not, in law, a ‘one-man’ company, but it was so in fact. Thus, it opened up a way to argue in favour of the legality of this type of limited company; i.e., it revealed that it was possible for a trader to limit the liability to the money which the trader put into the enterprise. Subsequently, many company laws in a number of jurisdictions have followed this sound argument and allowed, as a result, the establishment of a limited liability company with only one member. This company is referred to as ‘one-man’ company or ‘single-person’ company.

From the writer's discussion with a number of government officials, one of the (unstated) reasons for the reduction of the minimum requirement of promoters is the existence of *de facto* single-person companies. In Thailand, like anywhere else, single-person companies are commonplace. Although the 7-person rule is complied with on paper, in practice not all of the seven persons have any real interest in the company. In fact, a vast number of small companies are actually owned and managed by a single individual, but currently are required to bring in six other shareholders. This increases compliance requirements and is unnecessary in light of what happens in practice.

This is the case in all other countries that have legalised the one-person company. For instance, it is common in all Arab countries to find a limited liability company with more than one member but controlled by one member, being the father in most cases. The other members are simply nominal shareholders. In Qatar as in all other Arab countries *de facto* one-man companies have always existed despite the legal prohibition. The law itself has tolerated the establishment of such companies, as it contains no provision as to the seriousness of the minimum contribution of each member to the company's capital. This reality led Qatar to legalise the single-person company in 2002.

Therefore, if the prevalence of *de facto* single-person companies was indeed one of the reasons for the new rule on company formation in Thailand, the reduction to a minimum of 3 persons may not have been the right answer, as

it could still perpetuate what the new rule was meant to eradicate or minimise in the first place.

### 3.5 Risks to creditors

The most significant concern about single-person companies is the risks to creditors. Because of the company's limited liability, the sole owner is not as such liable for its debts and obligations. Thus, when obligations and debts are incurred on behalf of the company, the company is liable and not the owner. Moreover, as the sole owner of the company holds both ownership and management, the shareholders' supervision which would otherwise exist would be absent and therefore it is more likely for the single-person company to lose independence and harm its creditors. Typical wrongdoings that harm the creditors include:

- providing undue security to the single shareholder's other businesses;
- mixing corporate and personal assets; and
- disposing of the corporate assets at an unfair price (Ziegel et al., 1994; He, 2006)<sup>13</sup>.

However, such risks may be addressed through the provision of adequate precautions. For example, the Preamble to the Council Directive 89/667 on single-member private limited liability companies states that, "it is important to provide a legal instrument allowing the limitation of liability of the individual entrepreneur throughout the Community, without prejudice to the laws of the Member States which, in exceptional

<sup>13</sup> Mosleh Ahmad At-Tarawneh, "The 'single-person' company in the new amended company law of the state of Qatar", *Int. J. Liability and Scientific Enquiry*, Vol. 1, Nos. 1/2, 2007

circumstances, require the entrepreneur to be liable for the obligations of his undertaking.”

Therefore, the law pertaining to the formation of companies could address some specific issues such as whether only an individual or even a legal person can form a one-person company and whether a single member can form a company without any limit on the paid-up capital or some ceiling.

The Council Directive provides that Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly to ensure that the subscribed capital is paid. According to the new company law of China, one person, either a natural person or a legal person, is allowed to apply to set up a limited company. The minimum amount of registered capital of a one-person limited liability company shall be RMB 100, 000 yuan (approx. USD 12,500). The shareholder shall, in a lump sum, pay the capital contributions as specified in the articles of association. Individuals are prohibited from establishing more than one single-member company.

In addition, a one-person limited liability company shall, in the company registration, give a clear indication that it is solely-funded by one natural person or legal person and the same shall be specified in the business license of the company. In addition, the one-person company is required to file a financial statement by the end of every fiscal year, which shall be subject to audit by an accounting firm. If the shareholder of a one-person limited liability company is unable to prove that the property

of the one-person limited liability company is independent from his own property, he shall bear joint liabilities for the debts of the company. This can prevent the sole shareholder from taking advantage of the company’s assets for his/her personal use.

It has become clear nowadays that the company’s limited liability does not cut off personal liability at all times and in all circumstances. In a number of cases, the courts in the common law legal systems have been willing to pierce the veil of limited liability.

Therefore, if the Thai legislators had really wanted to introduce one-person companies in Thailand, provisions similar to the above could have been drafted and safeguards put in place to prevent risks to creditors.

### *3.6 Other practical concerns*

If the idea of a single-person company is to be contemplated, a question might arise regarding the management of a company with only one member, particularly with regard to the conduct of the shareholders’ meeting. Indeed, in most countries, the law governing companies enables a single-member company to have more than one director and grant exemptions to such companies from holding AGMs, although records and documents are to be maintained. Furthermore, aspects relating to nomination in case of death of the sole member are also covered. For instance, the amended company law of Pakistan permits one person to form a single-member company by filing with the registrar, at the time of incorporation, a nomination in the prescribed

form indicating at least two individuals to act as nominee director and alternate nominee director. With regard to the conduct of meetings, Article 4 of the Council Directive provides that "the sole member shall exercise the powers of the general meeting of the company" and "decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes or drawn up in writing."

#### 4. Conclusion: Incrementalism or a half-hearted compromise?

So, why do we still have the multi-individual companies? A possible answer one would receive as the reason for the current kind of half-way house approach to the Thai company law amendment is perhaps one of incrementalism. It may be suggested that Thailand is not ready, nor prepared, for such a radical change. Furthermore, it could be argued that company law is largely a domestic issue and, therefore, what company laws in other countries may stipulate is not Thailand's concern. However, with respect, I find myself unpersuaded by the arguments. What we have seen in the past few years is the impact of globalisation on commercial law, for instance, securities law, around the world. Therefore, a domestic approach to company law is no longer appropriate. Moreover,

in view of the existence of *de facto* single-person companies in Thailand, it makes no legal sense to continue prohibiting their incorporation. If the reason for the continued prohibition was really to take a step-by-step approach to the issue, then it should mean that much thought was given to the question of whether a radical change is appropriate for the country at present. However, that is unlikely to be the case because, given the circumstances of political instability during the time the amendment was passed, it is not unreasonable to assume that the amendment might have been a product of an unhappy compromise. Evidence of a compromise is the fact that there were attempts to change the rule regarding the minimum number of promoters required to form a limited company about 20 years ago and the committee set up for that purpose at the time proposed a reduction to a minimum of two promoters. However, nothing came out of that and now the 3-person rule is about to become law. Whatever the real reason, it is probably not incorrect to state that another opportunity for modernisation of Thailand's company law and vitalisation of the Thai economy has been missed. Nonetheless, one should not forget the big picture. It is that Thai company law has made another step forward, however disappointingly small it may seem to a number of observers.

