Clash of Corporate Personality Theories: a Comparative Study of One-member Company in China and Singapore

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China accords the one-member company special treatment distinct from the normal company. This is in sharp contrast with Singapore's indifferent attitude towards one-member company vis-à-vis normal company. This paper critically examines these two distinct approaches including the respective substantive rules, legislative background and underlying jurisprudential theories. The respective advantages and limitations of the theories/approaches are then identified. The aim is to propose a new jurisprudential approach towards corporate personality which draws on the strength of the two theories while avoiding their pitfalls.

Introduction

The one-member company plays an increasingly important role in the modern age of commerce in which small companies proliferate. [FN1] The advantages of limited liability and possible preferential tax treatment and loan facilities make the company an attractive business vehicle for small businesses. [FN2] This helps to promote commerce and economic competitiveness which is particularly relevant in transitional economies like China where the setting up of small businesses through small and medium enterprises is an important means of easing the unemployment problem resulting from large-scale retrenchment of employees from state-owned enterprises. [FN4] However, the recognition of the one-member company is a potentially challenging legal task. The artificiality of a company's separate legal personality is made glaringly obvious when the company has only one owner/shareholder. There are also concerns about possible abuse and creditor fraud.

The one-member company was legally recognised in Singapore and China at around the same time in 2005 and 2006, respectively. This is in line with the international trend of recognising one-member companies. [FN5] However, the different manner in which the one-member company was recognised reveals a sharp contrast.

In Singapore, the recognition of the one-member company simply involved the amendment of the Companies Act section 20A “a company shall have at least two members” to the current “a company shall have at least one member”. The one-member limited company in Singapore does not attract any special provisions or regulations as compared to a normal limited company. On the other hand, China's Company Law designates a sub-chapter specifically for the one-member limited liability company. As compared to a normal limited liability company, China's one-member limited liability company has a higher minimum registered capital and reverse burden of proof for limited liability. Amongst other additional restrictions/burdens.

This paper critically examines and discusses these two distinct approaches towards the one-member company.
This paper engages in an in-depth comparative study by looking into the respective substantive rules, legislative background and underlying jurisprudential theories. The respective advantages and limitations of the theories/approaches are then identified. The aim is to propose a new jurisprudential approach towards corporate personality which draws on the strength of the two theories/approaches while avoiding their pitfalls.

*427* The paper is organised into five parts. Part I explains the respective one-member company in China and Singapore. Particular attention is paid towards the comparison of official one-member company with de-facto one-member company (normal company with nominal shareholders to satisfy the minimum shareholders requirement). [FN9][FN9] This avoids the pitfall some of the previous works by others when they fail to include in their comparison entities formed by the practically common and obvious method of using nominees. [FN10][FN10] The limited attractiveness of China's one-member company vis-à-vis normal de-facto one-member company due to its additional burdens is highlighted. Part II and Part III proceed to analyze the respective legislative background regarding one-member company recognition and the underlying corporate personality to explain this difference in approach. Part IV critically examines the inadequacies of both China's (the civil law) and Singapore's (common law) approaches. A new jurisprudential approach drawing on the strengths of both approaches while careful to avoid their pitfalls is advanced in Part V.

I. Legal Structure of One-Member Company

A. China

The one-member limited liability company has been given official recognition [FN11][FN11] since the 2005 Company Law amendments. Chapter 2 Part 3 of China's Company Law is specifically devoted to regulating this new type of entity. Provisions concerning a normal limited liability company is applicable unless contrary to the special provisions. [FN12][FN12]

1. Setting up

The one-member limited liability company may be set up by a natural person or legal person. [FN13][FN13] However, a natural person may only incorporate one one-member limited liability company. [FN14][FN14] Registration is required [FN15][FN15] and the *428* date of incorporation is the issue date of the company business license. [FN16][FN16] The single-shareholder status must be mentioned on the company register and business license. [FN17][FN17] The minimum registered capital is RMB 100,000 which must be fully paid up upon incorporation. [FN18][FN18]

The setting up requirement for a de-facto one-member company is significantly less onerous. The minimum registered capital is only RMB 30,000. [FN19][FN19] Moreover, the initial paid-up capital may be only 20 per cent of the total registered capital if that 20 per cent is above RMB 30,000. There is no need to disclose the precise nature of the shareholding on the business license, even if it is a 99.9 per cent majority shareholding.

2. Management structure

The China's limited liability company has a typical civil law type (eg German civil law type) three-elements corporate governance structure comprising shareholders, directors and supervisors. [FN20][FN20] A smaller company may do away with the board of directors and have just one executive director. [FN21][FN21] Similarly, a smaller company can have just one supervisor. [FN22][FN22] A supervisor has legal duties of inspection and supervision, mainly to prevent derogation of duties by directors and high-level management. [FN23][FN23] A legal representative who will be criminally liable for company's certain violations of the law [FN24][FN24] must be appointed from the executive director, chairman of the board of directors or manager. [FN25][FN25]
The single shareholder status of one-member limited liability company means that shareholders' meetings are redundant. Matters requiring shareholder decisions are to be in writing and signed by the sole shareholder, and to be kept as a record with the company. [FN26] There is nothing prohibiting the sole shareholder from being the sole director or sole supervisor, but he *429 cannot fulfil all three management roles as the director cannot be the supervisor. [FN27]

For de-facto one-member company, an important consideration is whether the nominal shareholder is able to make a nuisance of himself / herself should the relationship between the two turn hostile (eg the nominal shareholder is a spouse and divorce occurs). This is not uncommon, at least in China, and is one of the justifications for the one-member company recognition. [FN28] A shareholder can sue (in their own name) directors, high-level managers and supervisors for the interest of the company if the directors / managers / supervisors act contrary to the law or the company's Memorandum and articles of Association (M&A) and cause losses. [FN29] This is a strong cause of action without all the common law derivative actions restrictions. [FN30] Important decisions which require shareholders special resolution are usually not an issue since a 2/3 majority is sufficient. [FN31] The nominal shareholder's first right to shares can be excluded in the M&A. [FN32] The nominal shareholder may also ask the company to buy back his or her shares at a reasonable price if there is i) no dividend continuously for 5 years despite making profit during that period; ii) merger, separation and transfer of major asset; and iii) continuation of company after stipulation in M&A. [FN33]

3. Separate legal personality (limited liability)

Both the official one-member company and the de-facto one-member company have independent legal person's property and enjoy legal person's property right. [FN34] The lawful successor of shareholder acquires shareholder status upon death of shareholder, unless otherwise provided in the M & A. [FN35] The shareholder enjoys limited liability but is subject to corporate veil piercing where there is unlimited liability if the shareholder abused the separate legal personality to “severely harm” the interest of the company's creditor(s). [FN37] Notably, the courts are more likely to find such abuse in de-facto one-member companies. [FN38] Notwithstanding this more liberal doctrine of corporate veil piercing against de-facto one-member company, the sole shareholder in the official one-member company still has the additional burden of proving that the company's assets are independent from his own to avoid unlimited liability. [FN39]

B. Singapore

Unlike China, the Singapore's one-member limited company is treated no differently from any other limited company. The recognition of one-member company only involves the amendment of section 20A of the Companies Act from “[a] company shall have at least two members” to the current “[a] company shall have at least one member”.

1. Setting up

A minimum of one member is required to set up a company. [FN40] A private limited company must not have more than 50 members and must have restrictions on transfer of shares. [FN41] Registration is necessary and the company *431 comes into existence on the date of incorporation specified in the notice of incorporation. [FN42]

2. Management Structure

Singapore adopts the common common-law two tier corporate governance structure of shareholders and directors. Only one director is required and the sole member may be that sole director if the member is residing in Singapore. [FN43] The company must have a company secretary to handle the administrative paperwork and requirements. [FN44] There are no formal qualifications required for a secretary in a private company, [FN45]
although qualifications may be required if the secretary fails to maintain the register properly. [FN46][FN46] Notably, a sole director shall not concurrently be the secretary. [FN47][FN47]

The sole member passes shareholders resolutions by simply recording and signing the shareholders resolutions. [FN48][FN48] A private company with more than one member may pass written resolutions, both ordinary [except for annual general meeting] and special, if the respective required majority agrees. [FN49][FN49] The director must consent to this agreement. [FN50][FN50] but this would not be a problem with the 99 per cent majority shareholder being the sole director. The sole director records and signs the declarations in lieu of directors meetings. [FN51][FN51]

The presence of nominal shareholders holding minimal minority shares (eg 1 per cent) was required under the pre-2004 Companies Act but this does not alter the absolute control the majority shareholder enjoys. The quorum for meetings may be varied in the articles [FN52][FN52] with the effect of rendering the nominal shareholder’s attendance unnecessary. The nominal shareholder has the right to attend meetings, [FN53][FN53] and must be informed in writing of meetings. [FN54][FN54] However, this can be circumvented by a written resolution for private companies. [FN55][FN55] If the nominal shareholder has at least 5 per cent in shareholding, he can call for a general meeting, [FN56][FN56] but this is only a slight inconvenience since there is no issue which requires unanimous approval by shareholders. Notably, all shareholders have the rights under oppression actions [FN57][FN57] and derivative action, [FN58][FN58] but the rights are arguably more restricted than those under China’s law. [FN59][FN59]

3. Legal personality

Section 19(5) of the Companies Act spells out the separate legal personality of the company. The company owns its land [FN60][FN60] and other property. [FN61][FN61] The shareholders enjoy limited liability, subject to the usual “device, façade or sham” test for piercing of corporate veil. [FN62][FN62] The company enjoys perpetual succession unaffected by the death of shareholders. [FN63][FN63]

C. Comparison: Limited Usefulness of One-member Company in China

The real test of the effectiveness of the one-member company as a viable / attractive business vehicle is how it compares to the normal company in the jurisdiction. Having chosen the corporate form instead of sole-proprietorship (whether because of tax, auditing or other factors), the individual entrepreneur still has the option of setting up a normal company with one shareholder holding 99 per cent of the shares and another friend / spouse / children / parent / employee holding the other 1 per cent. This 99 per cent-1 per cent company is for all practical purposes, including control and profit-distribution, identical to a one-member company. This comparison is crucial since the purpose of recognising one-member company would be defeated if the setting up of a one-member company does not offer any practical advantages over a 99 per cent-1 per cent normal company.

Here, the position in Singapore regarding one-member private limited company is straightforward. It is treated no differently from a normal private limited company. The recognition of one-member company only involves the amendment of section 20A of the Companies Act from “[a] company shall have at least two members” to the current “[a] company shall have at least one member”. The management structure of a Singapore one-member private limited company is more suited for an individual wishing to start a business. He can manage the company affairs through the simple process of filing / recording the relevant written shareholder and director resolutions without the need of holding formal meetings (and the accompanying requirement *433 for notice of meetings). This provides savings on administrative costs. Potential nuisance suits by the nominal shareholder are also eliminated. On the whole, the Singapore's one-member private limited company does offer an attractive and viable alternative business vehicle to an individual entrepreneur.

On the other hand, an individual entrepreneur in China has to incur significant additional costs and restrictions...
when he chooses the one-member limited liability company. At the setting up phrase, he will have to cough up more than three times the registered capital otherwise required for a normal limited liability company. He will enjoy a more streamlined management without shareholders meeting. However, the rights of the nominal minority shareholder are limited in any case since important decisions can be passed with only two-thirds majority. There is the risk of potential shareholder suits, but the nominal shareholding would have little incentive anyway. He is restricted to setting up just one one-member limited liability company, but can set up infinite de-facto one-member companies with the same nominee shareholder. He has to state the single shareholder status in his business licence. More significantly, the presence of this nominal minority shareholder will exempt him from the burden of proving separation of asset, which is necessary for the one-member limited liability company to enjoy limited liability. While the recognition of the one-member limited liability company in China does provide a new vehicle for individual entrepreneurs, the practical attractiveness of this vehicle over the traditional normal limited liability company is somewhat limited. [FN64][FN64]

This limited usefulness is reflected in empirical evidence. The true indicator of the one-member company's effectiveness is the ratio of one-member companies vis-à-vis the total new companies incorporated. After all, one-member company is meant to tackle the problematic use of de-facto one-member companies rather than replace the sole proprietorship enterprise. [FN65][FN65] This ratio is usually well under 20 per cent for many cities, [FN66][FN66] *434 with some as low as 3.6 per cent [FN67][FN67] and 0.53 per cent. [FN68][FN68] However, there are also a few cities which see ratios as high as 34 per cent. [FN69][FN69] To judge whether these ratios are high or low would require the proportion of de-facto one-member companies prior to 2006. Such data are understandably lacking although it is commonly acknowledged that de-facto one-member companies were prevalent in China prior to the amendments. [FN70][FN70] Indeed, a pre-2005 survey indicated that more than half of China's listed companies already had de-facto wholly-owned subsidiaries. [FN71][FN71] As a preliminary observation, ratios of less than 20 per cent do suggest that there is a significant number of individual entrepreneurs who still prefer incorporating de-facto one-member company over official one-member company. This can potentially undermine the legislative objectives of recognising one-member company, as shall be discussed in the next part.

II. Legislative Background

The contrast in the treatment of one-member company in Singapore and China can be understood through an examination of their respective legislative backgrounds.

A. China

The overall purpose of the 2005 Chinese Company Law amendments was to increase the ease of company formation so as to facilitate and promote investment and entrepreneurship. This is to achieve economic development and increase employment. [FN72][FN72] The setting up of small & medium enterprises was seen as an important means of easing the unemployment problem caused by large-scale retrenchment of state-owned enterprises' *435 employees. [FN73][FN73] The recognition of one-member limited liability company was very much in line with these objectives. [FN74][FN74]

However, during the legislative discussions, there were some lawmakers who opined that the setting up of a limited liability company by a single natural person is inconsistent with the characteristic of a company with the concentration of power in a single person. [FN75][FN75] There were also concerns about the increase in risks of fraud under such concentration of powers. [FN76][FN76] This led to calls that the one-member company should not enjoy limited liability. [FN77][FN77] These reservations expressed in the legislative discussions directly led to the imposition of Article 64 which requires the sole shareholder to bear the burden of proving separation of assets. [FN78][FN78] A member of the amendment special committee confirmed that this provision was necessary to allay the fears / reservations of many. [FN79][FN79] This new provision was part of an array of five measures in the final draft to tackle the perceived risks. [FN80][FN80]
The justification of one-member limited liability company shifted towards the existence of *de-facto* one-member companies using nominal shareholders and the difficulties in preventing such practice. \[FN81]\[FN81] The international trend of recognising one-member companies was also considered. \[FN82]\[FN82]

**B. Singapore**

All these tensions mentioned above were conspicuously absent in the Singapore context. As explained by the Company Legislation and *436* Regulatory Framework Committee (“CLRFC”) that recommended the amendment, the amendment was simply because “there is no continuing policy reason to require private companies to have a minimum of two share-holders and two directors.” \[FN83]\[FN83] This is no surprise since the 99 per cent-1 per cent *de-facto* one-member company has long been legally recognised as a valid separate legal entity capable of enjoying limited liability. \[FN84]\[FN84] The recognition of one-member company was simply the recognition of the existing practical reality while facilitating reduction in incorporation and maintenance cost. \[FN85]\[FN85]\[FN85] There were no serious objections or reservations in both the CLRFC Report and the parliamentary debate passing the amendment bill. \[FN86]\[FN86]\[FN86] The reduction of the minimum number of members to one was not even identified as an issue in the consultation paper leading to the CLRFC Report (only the reduction of the number of director to one was an issue). \[FN87]\[FN87]\[FN87] Rather, there were active supporters who thought that the two member requirement was an “unnecessary requirement.” \[FN88]\[FN88]

**III. Jurisprudential Contrast**

The differences in the substantive rules and legislative background can be further explained by the respective underlying jurisprudence on corporate personality theories.

**A. China (Civil Law)**

The legal person section of a civil law textbook on general principles of civil law provides a useful civil law perspective on corporate personality. \[FN89]\[FN89] The section will typically set out the three theories on legal personality, *437* namely i) fiction theory, ii) denial theory and iii) actual existence theory. \[FN90]\[FN90]\[FN90] Alternatively, since the consensus is that denial theory is plainly wrong, \[FN91]\[FN91]\[FN91] the real debate is between the fiction theory and actual existence theory. \[FN92]\[FN92]\[FN92]

The commonly preferred and accepted theory, especially in East Asia (eg China, Taiwan and Japan), is the organisation entity sub-variation of actual existence theory. \[FN93]\[FN93]\[FN93] It was proposed by French scholar Michoud. \[FN94]\[FN94]\[FN94] Under this theory, the underlying entity of a legal person is an organisation which differs from the constituting members. The will of this organisation entity is formed through its relevant organisation structure. It is credited as sufficiently explaining the underlying organisation characteristics of legal person, and explains the relationship between the organisation and its members. \[FN95]\[FN95]\[FN95] This theory is reflected in China’s company law jurisprudence which recognises this underlying organisation as a fundamental characteristic of a company. \[FN96]\[FN96]\[FN96]

However, in recent times, European civil law jurisdictions seem to be moving away from this theory. Portuguese civil law has rejected Savigny’s fictional theory and Gierke’s organisation theory. \[FN97]\[FN97]\[FN97] For Portugal, legal personality, whether that of natural person or legal person, is viewed as a creation of law, and which is utilised by law to protect certain interest. Portugal's civil law does not need to treat the legal person as if it is a natural person when conferring legal personality. \[FN98]\[FN98]\[FN98] Similarly, after lengthy and out-dated debate between the fictionists and the realists, French jurisprudence now treats a legal person as a legal instrument. \[FN99]\[FN99]\[FN99]

*438* This utilitarian view towards legal personality theory is echoed in Germany as well. *Fiktionstheorie* by von Savigny and *Theorie der realen Verbandspersonlichkeit* by Otto von Gierke are rejected. A neutral approach (neutrale
Formulierungen) is preferred now. This is also known as Theorie des Sondervermogens, or special property theory by Wiedermann. [FN100] Moreover, it regards the theoretical debate as useless today. [FN101]

Nonetheless, similar to the Chinese courts which are more inclined to lift the corporate veil for de-facto one-member companies, [FN102] the German courts and jurisprudence remain uneasy of companies without real separate underlying organisations. [FN103] Indeed, German Civil Law introduced the corporate veil piercing initially in the context of limited liability companies that have only one equity holder. [FN104] Fraud, illegality and intentional misconduct / wrongdoing are not even prerequisite for corporate veil piercing when there is pervasive control by the controlling entity. [FN105] As we shall see shortly, this concern for the real separate underlying organisation under the civil law's organisation entity (or realist) approach is conspicuously absent under common law.

*439 B. Singapore (common law)

1. Salomon v Salomon

The typical starting point of common law textbooks [FN106] on separate legal personality is the classic House of Lords case of Salomon v Salomon. Two important characteristics emerged from this decision. The most apparent feature is the formalistic approach towards legal personality. To the House of Lords, legal personality was created by statute and if the statute was formally complied with, then Salomon's one-man company was distinct from Salomon himself. This was so even if Lord Davey thought that this outcome might not have been contemplated by the legislature. [FN107] Nevertheless he held that the intention of the legislature must be inferred from the statutes and since there were no prohibitions on Salomon's “one-man company”, the company was capable of carrying on business with limited liability if it had complied with the statutory requirements. [FN108] The same emphasis on formal statutory compliance and absence of express prohibitions was adopted by Lord Macnaughten [FN109] and Lord Halsbury [FN110] as well.

Another theme which emerged was the ready acceptance of limited liability. Lord Macnaughten thought that a shareholder possessing over-whelming influence and entitled practically to all the profits was neither against public policy nor detrimental to the interests of creditors. [FN111] Not surprising, he held that since the statutory conditions were complied with, it did not matter whether the shareholders were related or holding only nominal shares. [FN112] He specifically rejected that there should be any balance of power in the constitution of the company. [FN113] He also recognised that, *440 in reality, the statutory minimum number of “almost every company” was made out by clerks and friends who signed their names without taking any further part. [FN114] Limited liability (along with ability to raise finance) was recognised as the most important reason for incorporation of private companies, and the detriment to creditors was justified by the fact that they had knowledge of this limited liability when they dealt with the company. [FN115] Lord Herschell also recognised this lawfulness of carrying on business with limited liability. [FN116]

2. Singapore's application

There are commentators who opined that the Salomon decision was not principally remarkable for its inherent authority but rather its later reception. [FN117] Indeed, the two themes identified above continue to resonate strongly in English [FN118] and Singapore's courts. [FN119] The recent Singapore Court of Appeal case [FN120] of Miller Freeman Exhibitions Pte Ltd v Singapore Industrial Automation Association [FN121] is an illustrative example. In the context of whether an association was a proper party in a contract dispute where its wholly-owned subsidiary was the contracting party, the Court of Appeal held that it was not (ie the wholly-owned subsidiary was a legal entity distinct from the association). This is notwithstanding the clear absence of practical independence / distinction between the wholly-owned subsidiary and the association. [FN122] Similarly, the Singapore Court of Appeal expressed the traditional affirmative attitude towards
limited liability. The court acknowledged that the law gave the association the right to utilise the corporate structure by setting up a company, even if it was a two dollar company, in order to limit its liability and risk. The justification was that the parties dealing with the company must have known or should have known about it and nevertheless decided to do business with it. The similarities of this reasoning with those expressed by Lord Macnaughten and Lord Herschell over 100 years ago are stark to say the least.

3. Characteristics of common law jurisprudence on legal personality

What do these two themes say about the common law jurisprudence of legal personality? First, it is safe to say that English common law is clearly not realist. Realist (or real entity theory) as discussed above emphasises the underlying entity of legal person. In a realist legal system, entities with “real personality” (real separate underlying organisation) will have legal personality while entities without “real personality” will not have legal personality. On the other hand, a fictionist legal system grants legal personality simply on the basis of whether it is beneficial to do so. The ease and the straightforwardness in the courts' recognition of the separate legal personality of one-man company as long as the statutory requirements are complied with speak volumes of the formalistic and fictionist approach of the common law jurisprudence.

In fact, the distinctive lack of legal personality theory is characteristic of common law. Among the 15 common law company law textbooks surveyed, only two provided any form of discussion on corporate personality theory with barely a few more discussing justifications and rationales of limited liability. The House of Lords in Salomon was more concerned with the wordings of the statutes conferring separate legal personality than any underlying corporate personality theories. Companies exist for practical reasons of economic efficiency and company law jurisprudential theory is at best an “intellectual games” in the eyes of the common law courts. Contemporary debates focus on the problems generated by the acceptance of separate legal personality rather than whether it should be in principle be made available. This is possibly due to the pragmatic, practitioner-orientated and case-based nature of common law as opposed to the civil law jurisprudential approach. Unlike the German courts which started off by asking whether the principle should even apply to group companies, the English common law courts simply upheld the Salmon principle in almost all cases while suggesting that it is for Parliament to tackle this problem.

C. Treatment of one-member company reflects underlying corporate theory

1. China

The legislative discussions in China on one-member company revealed concerns about fraud on creditors. However, there were also lawmakers who opined that the whole idea of one-member company was inconsistent with the characteristic of the company. This was echoed by academic views, which often placed the lack of organisation characteristic (and the consequential concentration of power and lack of checks and balances) as the primary objection to recognition of the one-member company. This led to the development of “latent organisation” theory where the one-member company still retains the underlying organisation characteristic, albeit in latent form till the arrival of new members. Notwithstanding that there are scholars who are now critical about the underlying organisation as a fundamental characteristic of the company, the extent of the debate and the attempted justification of the one-member company through latent organisation and complex share theory can only further highlight the entrenchment of entity theory in civil law jurisdiction (in particular China's). Thus the legislators felt compelled to introduce additional safeguards and restrictions on the one-member company which was considered a special exception to the corporate personality theory. Indeed, this compulsion for special regulations on one-member company is most glaring in the audit requirement. Article 63 of China's Company Law requires the one-member limited liability company to prepare an annual financial accounting report for auditing. However, there is already Article 165 which imposes the same audit requirement on all companies in exact wording, save an additional (but content-wise immaterial) line. This renders
Article 63 practically redundant. Given the concise nature of the Chinese Company Law, this practically inconsequential Article 63 best epitomises the special treatment and concern of one-member company vis-à-vis other companies under Chinese Law.

This approach is not unique to China and is evidenced in other civil law jurisdictions. In Germany, there are also additional requirements for an one-member company in terms of capital contribution and subsequent operations. If the incorporator of an one-member company is an individual, he must provide a personal guarantee during incorporation. Further, if the company becomes insolvent because of the sole shareholder, the creditors shall have the right to personally sue him for the debts. Likewise, an individual is prohibited from incorporating more than one one-member company under French company law. The sole incorporator must also personally guarantee the valuation of the non-monetary registered capital of the one-member company for a period of five years. In Vietnam, an one-member limited liability company must appoint a supervisor unlike a normal limited liability company where it is optional. The one-member limited liability company is also prohibited from reducing its charter capital, which is possible for a normal limited liability company. The sole owner also has the additional obligation to identify and separate assets of the company from his own.

2. Singapore

On the other hand, the requirement in continental European civil law jurisdiction of affectio societatis is not nearly so strong in English common law. If the legal personality is treated by Singapore and English courts as a statutory creation and would be recognised as long as formal statutory requirements are satisfied, the need to examine whether there is any underlying organisation is dispensed with. More significantly, there are no inherent objections against separate legal personality even where there are no separate underlying organisations (eg a de-facto one-member company). With the courts having little qualms in affirming the legality of this arrangement, it is not surprising a simple clarification that “there is no continuing policy reason to require private companies to have a minimum of two shareholders” was all it took to justify recognising the one-member company without the need for any special restrictions / regulations.

IV. Problems of China's and Singapore's Approaches

A. Problems with China's approach (and entity theory)

Notwithstanding the limited usefulness of China's one-member company as discussed in I.C, the additional burdens themselves or the underlying entity theory jurisprudence are neither illogical nor without merits. The common law's ready acceptance of corporate personality reflects her commerce-oriented tradition in both legal and economic development. The operation of limited liability flowing from corporate personality also requires a robust commercial legal infrastructure. The common law justified its liberal attitude towards limited liability by the fact that parties dealing with the company are fully aware of the limited liability and have means to evaluate the credit rating of the company. By comparison, Chinese scholars have recognised the current deficiency of China's credit rating and corporate disclosure systems. The increase in fraud on creditor and abuse of limited liability without the checks and balances provided by the organisational separation of power is a real concern as well. Indeed, the Chinese courts are arguably on the right track by being prepared to lift the corporate veil more readily for de-facto one-member company.

The crux of the issue is that there is no reason to specifically single out official one-member company for special treatment without imposing the same on de-facto one-member company. The absence of such restrictions on a de-facto one-member company undermines the effectiveness and practicality of both these restrictions and the one-member company institution. An individual intending to incorporate a company on his own but wishing to avoid the additional burdens of one-member limited liability company can easily do so by asking his wife / children /
parent / friend to take up a minute of amount of shareholding / ownership in the company to ensure it remains a normal company. The control and profit-enjoyment of such a company is for all practical purposes identical to an official one-member company. However, such a company is a significantly more attractive corporate vehicle without the special burdens / restrictions of official one-member company. The ease of evading such restrictions by simply incorporating a de-facto one-member company also fails to advance the goal of preventing fraud on creditors.

In addition, if the proliferation of de-facto one-member companies and the corresponding need to bring them under proper regulation is a very important reason behind the recognition of one-member company, there is no justification why de-facto one-member company is left out in the various safeguards designed to tackle the abuse of official one-member company. Those safeguards end up solving the symptom but not the cause. [FN156][FN156]

Diagram A: China's Approach

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

B. Problems with Singapore's approach (and fictionist theory)

Singapore's position of treating official one-member company and de-facto one-member company on the same footing is the correct approach. As explained in the previous section, drawing a distinction between the mere legal formalities of membership and imposing additional burdens based on this formalistic distinction will only produce the double whammy of *446 rendering useless the burdens themselves and the one-member company institution.

In addition, this legal formalistic approach simplifies the administration of companies by relieving the courts and regulatory authorities of the need to examine whether there is a real underlying organisation. This not only reduces administrative costs but also injects certainty into the law. Parties are assured of corporate personality and limited liability with formal statutory compliance. They need not be overly concerned about any ambiguous and non-explicit requirements, in particular the need to maintain a real separate underlying organisation.

However, this approach of granting legal personality regardless of whether there is a real underlying organisation (eg a de-facto one-member company) is not without problems.

From a historical perspective, legal personality was not intended to be granted to such entities without an underlying organisation. The Victorian legislature originally intended to exclude small businesses from incorporation, requiring at least 25 members and later at least seven members for incorporation. [FN157][FN157] This is no surprise since the main legislative purpose for separate legal personality and limited liability at that time was to facilitate investment by members of the public. [FN158][FN158] This policy was undermined by the practice of using of nominee shareholders which was approved by the House of Lords in Salomon. [FN159][FN159] Lord Davey (and the lower courts) had opined that this outcome (of recognising separate legal personality of the one-man company) might not have been contemplated by the legislature. [FN160][FN160] While the legislature did not seek to reverse Salomon, it referred to the 1989 EC Twelfth Directives (and the Companies (Single Member Private Limited Companies) Regulations 1992, SI 1992 / 1699) before one-member companies were formally allowed. [FN161][FN161] There is indeed a real sense of irony that while the common law has no problem recognising de-facto one-member companies, the statutory recognition of one-member company actually originated from across the channels in civil law jurisdictions. [FN162][FN162]

More importantly, there are strong policy reasons against such liberal and indiscriminate granting of corporate personality. In particular, there is a real risk to third-party creditors. While creditors may protect themselves *447 by asking for personal guarantees from directors or shareholders, [FN163][FN163] this may not apply to small creditors or involuntary creditors. [FN164][FN164] Commercial expediency dictates that small trade creditors are unlikely to expend time and money on making checks on company, and will be in a perilous position in a Salomon type situation
of a company granting debentures to its de-facto owner. [FN165][FN165] The use of such short-term finance obtained other than as a result of a company's worth (eg personal guarantee) may produce a side effect where the company expands out of line with its capital base, rendering ordinary creditors extremely vulnerable. [FN166][FN166] From an economic analysis perspective, [FN167][FN167] limited liability arising from corporate personality [FN168][FN168] has the undesirable effect of artificially supporting marginal business ventures at the expense of their creditors [FN169][FN169] and third party torts victims. [FN170][FN170] Limited liability encourages the formation of marginal businesses that are more likely to fail, imposing the costs of those failures on society. [FN171][FN171]

This doctrine has led to the current proliferation of very small companies which “can and do[es] lead to abuse and give rise to ever-increasing administrative difficulties.” [FN172][FN172] Such abuses include the undercapitalisation of business to the adverse consequences to other small trade creditors. There is also the “phoenix syndrome” where irresponsible entrepreneurs allow their company to go into insolvent liquidation and then re-commence business using a new company vehicle after buying the business assets from the liquidator. [FN173][FN173] While this paper focuses on small one-member company, it is worth noting the difficulties and policy challenges posed by the current liberal use of wholly-owned subsidiaries by massive conglomerates are also side-effects from this formalistic approach. [FN174][FN174]

Admittedly, these concerns / abuses of corporate personality and limited liability are possibly applicable to companies with real separate underlying organisations (eg public companies) as well. [FN175][FN175] However, there are at least strong countervailing policy justifications where such companies are concerned. There is the facilitation of public securities market and public investment by relieving the investor of the need to enquire about the personal wealth of fellow investors [FN176][FN176] and the participation of day-to-day management of the company. [FN177][FN177] There is also the “asset partitioning” rationale where the company is protected from the shareholder's creditors. [FN178][FN178] The fact that these policy justifications are only applicable if the company has a real separate underlying organisation only highlights the deficiency in the fictionist's indiscriminate granting of corporate personality to entities without real separate underlying organisation. It is also worth noting that the advantage of straightforward company administration under the formalistic / fictionist approach has also been diluted by the controversies and inconsistency over the doctrine of corporate veil lifting / piercing. [FN179][FN179]

*449 Diagram B: Singapore's Approach

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V. Conclusion

A. A New approach

In this comparison of one-member companies in Singapore and China, the special treatment of one-member company in China is in sharp contrast with the indifferent treatment of one-member company in Singapore. Both approaches have strengths and weaknesses. Singapore's fictionist indifference towards official one-member company ensures that the one-member company does provide a practically attractive and viable alternative vehicle for an individual entrepreneur. This is precisely the undoing of China's realist approach where uneasiness over the lack of separate underlying organisation dictates the special restrictions / burdens on official one-member company, resulting in severe limitations of the effectiveness and viability of China's one-member companies. However, the emphasis of China's realist approach on the requirement of separate underlying organisation reflects the original legislative intention and policy justifications for corporate personality. The current abuse of corporate personality arising from the indiscriminate granting of corporate personality under common law that completely disregards the need for an underlying separate organisation only highlights the merits of China's realist approach.

The natural conclusion is that jurisprudentially, the proper distinction should be drawn between companies with
real separate underlying organisation and those without while not distinguishing companies with only official (but none in reality) separate underlying organisation and those without official separate underlying organisation (see Diagram C). This approach draws on the strengths of both approaches while avoiding the respective pitfalls. Under this approach, the advancement of legitimate concerns about abuses and creditor risks - a key strength of the China's (and civil law) realist approach - can materialise while maintaining the commercial efficacy of the one-member company vehicle - the hallmark of Singapore's (and common law) fictionist approach.

**Diagram C: The Proper Approach**

This does not necessarily mean that limited liability and separate legal personality should not be accorded to companies without real separate underlying organisation (although there are academics, [FN180] including common law academics [FN181][FN181], who support this exclusion). Neither is the imposition of extra burdens / restrictions on both de-facto and official one-member companies a necessary consequence of this new approach. What is required is for the courts and parliament to recognise that there is an important distinction and to carefully analyze whether, notwithstanding this distinction, the separate legal personality (and limited liability) should apply. And if it should apply, whether any modifications or restrictions are necessary to the application. Any concerns that the possible withdrawal of corporate personality or imposition of restrictions may discourage private entrepreneurship or risk diversification are mitigated by the empirical study that limited liability is not regarded as necessary by about 85 per cent of all business proprietors. [FN182][FN182] More importantly, commence and business activities are now well entrenched in modern times as compared to the 19th century era when corporate form and limited liability were introduced to promote the then fledgling investment and commercial activities. If the objectives of creditor protection and prevention of abuses are indeed better advanced under this new approach, some stifling of entrepreneurship (especially entrepreneurship involving high-risk and / or undercapitalised ventures) should be tolerated. [FN183][FN183]

**B. Comparative perspective: the way ahead**

This comparative study underlines the value of comparative study and the potential pitfalls from the shackles of one's jurisprudential tradition. The ease of evading the special burdens / restrictions on official one-member company by incorporating a de-facto one-member company is quite apparent to say the least, especially given the context that it is the prevalence of de-facto one-member companies which spurns the recognition of official one-member company. However, among all the civil law materials (including legislative materials) surveyed, only the works by Liao Da Yin from Taiwan and Bai Jian Long from China recognised that such differential treatment only end up solving the symptom but not the cause. [FN184][FN184] On the other hand, the mere requirement of a suffix of “OPC” (abbreviation of One Person Company) to distinguish it from other types of companies is sufficient to prompt Aparna (an Indian common law scholar) to voice out concerns that it “may defeat the entire purpose of one-person company”. [FN185][FN185]

Similarly, the common law courts' unquestioned application / adoption of the Salomon principle to circumstances which are neither intended by legislature nor supported by policy justifications turns a blind eye to the real risk of abuse and fraud on creditors. Here, the prevalent reservations and uneasiness among lawmakers and academics in civil law jurisdictions on one-member companies provides a timely reminder that the Salomon principle revered in so many common law textbooks should not be unquestionably applied to companies without real separate underlying organisation.

*452 The new jurisprudential approach proposed in this paper is the fruit of an in-depth comparative study which provides a new perspective to critically re-examine and re-evaluate our own long-held jurisprudential assumptions. The author believes that more applications of such comparative study approach in other areas of corporate law will inject new jurisprudential perspectives that are useful in understanding other legal environments and improving one's own.
[FNa1]. Yeo-Leong & Peh LLC, Advocate and Solicitor (Singapore), LL.B. (National University of Singapore). This piece was made possible by the invaluable guidance from Assoc. Prof Yeo Hwee Ying and the great research assistances: Fiona, Daniel and Chengying. However, all inadequacies are mine alone.


[FN2]. Ibid. p 203; but cf commentator who noted that main reason in most cases for incorporation of closely held companies is not to obtain the benefits of limited liability but to minimize income tax: Philip Lipton & Abe Herzberg, *Understanding Company Law* (Pymont: Lawbook Co., 13th edn, 2006), p 27. This is supported by a 1995 empirical research conducted in UK that nearly half of small company's founders did not incorporate principally to obtain limited liability, bearing in mind that a third of all companies have substantially given up limited liability by signing personal guarantees: Andrew Hicks, Robert Drury & Dr Jeff Smallcombe, *Alternative Company Structures for the Small Business* (ACCA Research Report No. 42), London: Association of Chartered Certified Accountants, 1995) in Andrew Hicks & S. H. Goo, Ibid. p 78.


[FN6]. RMB 100,000 under article 59 as compared to RMB 30,000 under article 26, “<<Foreign Language>>” [“Company Law”] (Chairman Order 42, 2005) (PRC).

[FN7]. Art 64, Ibid. the sole shareholder will be jointly liable for the company debts if he cannot prove that the company's assets are independent of his. See n 39 below on operation of this provision.

[FN8]. See Below I.A & I.C.

[FN9]. Eg Mr Salomon’s *company in Salomon v Salomon [1897] AC 22*.


[FN11]. There are pre-2005 exceptions for wholly state-owned enterprises and foreign investment enter-prises which
legally allowed single membership in those companies: Wang Tian Peng (n 5 above), pp 353-354.


[FN13]. Ibid. Art 58.

[FN14]. Ibid. Art 59.


[FN17]. Ibid. Art 60.

[FN18]. Ibid. Art 59.


[FN22]. Ibid. Art 52.

[FN23]. Ibid. Art 54. While the supervisor may seem closely akin to the independent director to a common law reader, it is interesting to note that independent director is explicitly required for listed company: Ibid. Art 123.

[FN24]. “<<Foreign Language>>” (“General Principles of the Civil Law”) (Chairman Order 37, 1986) (PRC), Art 49. The list comprises of 1) illegal operation outside the registered business field; 2) concealment of truth and/or fraudulent misrepresentation to registration and tax authority; 3) evasion of debt liability; 4) unauthorized dealing with asset after dissolution; 5) caused severe losses to interested party through failure to register and serve public notice for changes or termination; 6) participate in other illegal activities.


[FN26]. Ibid. Art 62. This is the same for Singapore, see below I.B.2.

[FN27]. Ibid. Art 52.

[FN28]. “<<Foreign Language>>” (“Prevent Nominal Shareholder from Turning the Table on Majority Shareholder”) Beijing Modern Commercial Paper, 11 November 2005; Liu Bin, “<<Foreign Language>>” (“Convenience to Investors but one Must Also Understanding its Unique Features”) Daily Business, 1 November 2005.


[FN30]. The strict proper plaintiff rule in Foss v Harbottle (1846) 2 Hare 461 had been mitigated by the statutory derivative action under section 216A of Companies Act (Cap 50, 2006 Rev Ed) (Singapore). However, there are still
the two requirements of good faith and that it appears prima facie in the interest of company that action be brought. Notably, the shareholder can only sue his company's director, high-level manager and supervisor under article 152, Company Law (2005) (PRC). Third parties, whether by virtue of contractual or tortious liability, cannot be directly sued by the Chinese shareholders, unlike under the Singapore's section 216A statutory derivative action which has no restriction on litigation targets. Nonetheless, the case necessitating such an action by the shareholder against third party is less compelling in the absence of conflict of interest.


[FN32]. Ibid. Art 72.

[FN33]. Ibid. Art 75. In Singapore, unless specifically inserted in the company's M&A, the right for a share-holder to demand such a repurchase depends on whether he is able to establish oppressive action under s 216, Companies Act (Singapore).


[FN35]. Ibid. Art 76.

[FN36]. Ibid. Art 3.

[FN37]. Ibid. Art 20. Chinese scholars commonly identified 3 elements necessary to constitute corporate veil piercing, namely i) there must be a controlling shareholder; ii) the controlling shareholder's actions are those which constitute abuse of corporate personality, namely avoidance of company's legal liability, avoidance of company's contractual liability, and/or mixing of assets, business organization which result in company being an alter ego; iii) these actions resulted in losses to the company's creditor and other related body which has to be compensated by the corporate veil piercing: Zhu Ci Wen, “<<Foreign Language>>” [“Abuse of Corporate Personality and Corporate Veil Piercing”] (1998) 3 Legal Research 73; Zhang Zhi Cheng, “<<Foreign Language>>” [“Legal and Social Analysis of Legal Person - and Discussion on Corporate Veil Piercing and Legal Personality of One-member Company”] Chinalawinfo, available at http://article.chinalawinfo.com/article/user/article_display.asp?ArticleID=25361.

[FN38]. See article 50(1) of <<Foreign Language>> [Supreme People Court's Consultation Paper on Regulations of Adjudicating Cases Regarding Company Disputes] (http://www.chinacourt.org, official website of China's judiciary, 4 November 2003) (PRC) which imposes unlimited liability on the de-facto sole shareholder of a de-facto one-member company. While this is a consultation draft with no further news on its finalization or implementation, its origin from the Supreme People Court provides a strong indication of the likely more liberal approach towards de-facto one-member company in corporate veil piercing cases.

[FN39]. Company Law (2005) (PRC), Art 64. An example of non-separation of assets is when the investor sets up the company and operates the company business from his house. Unless he is able to show that this house has nothing to do with the company's property (eg by showing that the house was acquired with funds unrelated to the company's asset), that house may be reached by the company's creditor: “<<Foreign Language>>” [“One-member Company: Many Queries Few Incorporations - Minimum Registered Capital of RMB 100,000 Must be Fully Paid Up at one go”] Nanfang Dushi, 19 January 2006.

[FN40]. Companies Act (Singapore), s 20A.

[FN41]. Ibid. s 18(1).
[FN42] Ibid s 19.

[FN43] Ibid s 145(1).

[FN44] Ibid s 171.

[FN45] Ibid s 171(1).

[FN46] Ibid s 171(1AB).

[FN47] Ibid s 171(1AB).

[FN48] Ibid s 184G.


[FN50] Ibid s 184B.

[FN51] Ibid s 157B.

[FN52] Ibid s 179(1).

[FN53] Ibid s 180.

[FN54] Ibid s 177(2).

[FN55] Ibid s 184A.

[FN56] Ibid s 184D.

[FN57] Ibid s 216.

[FN58] Ibid s 216A.

[FN59] See n 30 above.

[FN60] Companies Act (Singapore), s 19(5).


[FN62] Eg Win Line (UK) Ltd v Masterpart (Singapore) Pte Ltd & Anor [2000] 2 SLR 98 where it was held that the test is as applicable to wholly-owned subsidiary company as it is traditionally applicable to one-man company.

[FN63] Companies Act (Singapore), s 19(5).

[FN64] Also see Aparna Viswanathan, “Reinventing the Company in India: The Expert Committee Report on
Corporate Form and Governance” (2006) 17(1) International Company and Commercial Law Review 1-5, where he commented that the mere requirement of a suffix of “OPC” (abbreviation of One Person Company) to distinguish it from other company “may defeat the entire purpose of one-person company”.

[FN65]. Below II.A.


[FN70]. Ning Qiao Po, “<<Foreign Language>>” [“One-member Company Down a Lonely Path?”] Jinri Anbao, 8 September 2006; “<<Foreign Language>>” [“Analyzing One-member Company”] Liaowang Eastern Weekly, 2 February 2005; “Prevent Nominal Shareholder from Turning the Table on Majority Shareholder” (n 28 above).


[FN73]. “New Company Amendment Remove Obstacles for Setting up of Business by One Individual” (n 4 above).

[FN74]. NPC Press Conference (n 72 above).


[FN76]. Wang Ying Wei (NPC representative), Ren Yu Qi (NPC representative) & He Yi Cheng commissioner in NPC Selected Quotes, ibid.

[FN77]. Liu Zhen Wei commissioner & He Yi Cheng commissioner in NPC Selected Quotes, ibid.


[FN79]. Zhao Xu Dong in “<<Foreign Language>>” [“Company Law Amendments Beyond Expectation”] 21”


[FN82]. NPC Discussion Report, ibid. “One-member Company Allowed in China, Minimum Registered Capital is RMB 100,000” (n 80 above); “How to Resolve the Risks of One-member Company”, ibid.


[FN84]. In the Salomon case (n 9 above), the majority shareholder held 20001 shares while the remaining 6 shareholders, who were his family members, held 1 share each. This is equal to 99.97 per cent-0.03 per cent shareholding structure. See below III.B.

[FN85]. CLRFC Report (Singapore) (n 83 above), Chapter 1, para 6.21.

[FN86]. Companies (Amendment) Bill Hansard, Parliament No 10, Session 1 Volume No 77 Sitting N 3 Column 375 (hereinafter Companies (Amendment) Bill”).


[FN88]. Dr Gan See Khem in “Companies (Amendment) Bill” (n 86 above).

[FN89]. China with its communist heritage arguably possesses strong socialist influence. However, socialist law mainly manifests in the public law domain. In the private / corporate domain, civilian influence is apparent. (eg the very fact that China has a General Principle of Civil Law). See generally H. Patrick Glenn, Legal Traditions of the World (Oxford: Oxford University Press, 2000), p 306-311.


[FN91]. Ibid.

[FN92]. Carlos Alberto Da Mota Pinto, Theoria Geral Direito Civil (Chinese translation) (Macau: University of

[FN93]. China: Wang Quan Di (n 90 above), p 133; Taiwan: Huang Mo Fu (n 90 above), p 91; Huang Yang Shou (n 90 above), p 106; Zheng Zheng Zhong (n 90 above) p 49, Hu Chang Qing (n 89 above), p 108; Japan: Si He Gong Fu (n 89 above), p 83.

[FN94]. Wang Quan Di (n 90 above), p 134.

[FN95]. Ibid.


[FN97]. Alberto Da Mota Pinto (n 92 above), pp 62-63.

[FN98]. Ibid. p 63.


[FN100]. Dieter Medicus (n 92 above), p 823.

[FN101]. Ibid.

[FN102]. N 38 above.

[FN103]. Sandra K. Miller, “Piercing the Corporate Veil among Affiliated Companies in the European Community and in the U.S.; a Comparative Analysis of U.S., German and U.K. Veil Piercing Approaches” 36 American Business Law Journal 73, pp 100-101. Companies which are controlled by another entity (whether a company or an individual), the key feature of a company without real separate underlying organization, are subject to a broad array of rules governing governance, auditing, information reporting and liability to creditors.


[FN105]. Miller (n 103 above), pp 83-84.


[FN108]. Ibid.

[FN109]. Ibid. at 50.

[FN110]. Ibid. at 30.

[FN111]. Ibid. at 53.

[FN112]. Ibid. at 50.

[FN113]. Ibid. at 51.

[FN114]. Ibid.

[FN115]. Ibid. at 53.

[FN116]. Ibid. at 43.


[FN119]. Yeo et al. (n 106 above), p 36.

[FN120]. In Singapore, Court of Appeal is the highest court of the land.

[FN121]. [2000] 4 SLR 137

[FN122]. The courts found that i) the wholly-owned subsidiary had only a paid up capital of $2 and both issued shares were held by the association; ii) the wholly-owned subsidiary shared the same office address and had the same officers as the association; iii) the association was the party being dealt with by the contracting parties, as seen from the fact that most of the correspondence were written on the letterhead of the association; iv) the association managed and controlled the wholly-owned subsidiary and is the “driving force” or “head and brain.”


[FN124]. Ibid.

[FN125]. Mayson, French & Ryan (n 106 above), p 186. Also see Foster (n 99 above), p 582 who viewed fiction theory as underlying Lord Macnaughten's dictum in *Salomon*. 
[FN126]. Mayson, French & Ryan, *Ibid*. p 186. An interesting illustration is Scottish jurisprudence which is subject to significant continental influence: Morse & Girvin (n 106 above), p 5 footnote 14. A Scottish partnership, which has arguably a much more real underlying organization as compared to a *de-facto* one-member company, has separate corporate personality in contrast with the English partnership: s 4(2), Partnership Act 1890 (Scotland) in Hicks & Goo (n 1 above), p 81.


[FN128]. *See* Foster (n 99 above), p 582 (in particular its footnote 24: fiction theory is “the only theory about the personality of corporations that the common law has ever possessed”).

[FN129]. N 106 above.

[FN130]. Mayson, French & Ryan (n 106 above); Dine (n 106 above).

[FN131]. Lipton & Herzberg (n 2 above); Davies (n 106 above); Dignam & Lowry (n 106 above); Hicks & Goo (n 1 above).

[FN132]. Foster (n 99 above), p 588.

[FN133]. Davies (n 106 above), p 36.

[FN134]. Foster (n 99 above), p 587; Glenn (n 89 above), p 210 (“Lawyer's Law”).


[FN137]. Liu Zhen Wei commissioner in NPC Selected Quotes (n 75 above).

[FN138]. Zhao De Qu (n 5 above), p 302; Song Guang Lin (n 71 above).

[FN139]. Zhao De Qu, *Ibid*. p 316; Song Guang Lin, *ibid.*; Liao Da Yin, “*<<Foreign Language>>*” [“Research on Current Problems and Amendments of One-member Company”] 39 *Socioeconomic Law and Institution Review* 1, 30. In the quest of finding an appropriate jurisprudential basis for one-member company, there is also the complex share theory (membership should be “objectified” like shares): Zhao De Qu, p 317; Song Guan Lin; Liao Da Yin, p 136 and special property theory: separate of asset just that some assets is specifically owned by the company: Zhao De Qu, p 317; Song Guang Lin.

[FN140]. Zhao De Qu, *Ibid*. p 326; Wang Tian Peng (n 5 above), p 15; Song Guang Lin (n 71 above); Also see Liao Da Yin, *Ibid*. pp 30-31 who suggested putting this debate aside temporarily when legislating on one-member companies.

[FN141]. “financial accounting report should be prepared in accordance with law, administrative regulations and departmental rules”

[FN142]. 219 articles compared to 498 sections in Singapore Companies Act.
[FN143]. Frank Wooldridge, “Proposed Reforms of the German GMBH” (2007) 28(12) Company Lawyer 381-383, 381 (However, this requirement would be repelled from 1 October 2007).


[FN145]. Zhao De Qu (n 5 above), pp 106-108.


[FN147]. Ibid. Art 76(1).

[FN148]. Ibid. Art 60(3).

[FN149]. Ibid. Art 65(3).

[FN150]. Hicks & Goo (n 1 above), p 88.

[FN151]. CLRFC Report (Singapore) (n 83 above), Chapter 1, para 6.21.

[FN152]. See above III.B.


[FN154]. See Savirimuthu (n 1 above), p 203; Robert W. Hamilton, Corporations (West Publishing Co, 6th edn), p 257

[FN155]. n 38 above.

[FN156]. Liao Da Yin (n 139 above), p 37.


[FN160]. 1897 A.C. 22, at 54.

[FN161]. Davies (n 106 above), p 28; Davies (n 158 above), p 191.

[FN162]. Hicks & Goo (n 1 above), p 88.

[FN163]. Davies (n 158 above), p 179.

[FN164]. Ibid.
[FN165]. Griffin (n 106 above), p 9.


[FN168]. If company and its members are two distinct subjects of property right, then each owes no legal obligation to any contract the other has independently formed with a third party: Katsuhito Iwai, “*Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance*” 47 *American Journal of Comparative Law* 583, 591.


[FN172]. Savirimuthu (n 1 above), p 203.


[FN174]. Lipton & Herzberg (n 2 above), pp 33-44 (socially inefficient approach towards tortuous liability); Janet Dine, *Company Law* (London: Sweet & Maxwell, 2001) p 48 (transnational conglomerate taking advantage of lax regulatory regime of developing nations); Davies (n 158 above), p 210 (arguing more elaborate debate is necessary before the legislature and courts continue to disregard the use of group-specific laws to protect creditors in company group situation); Dignam & Lowry (n 106 above), p 47 (“Perhaps the most disturbing use of limited liability occurs within group structures.”); Cortenraad (n 167 above), pp 307-308 (arguing for unlimited liability for parent corporation to discourage use of “special purpose” subsidiary corporations established to perform activities with a high risk of generating excessive liabilities).


[FN177]. Ellis (n 106 above), p 20.

[FN178]. Davies (n 106 above), p 66-67; Dignam & Lowry (n 106 above), p 46.


[FN180]. Zhang Zhi Cheng (n 37 above); above n 38.
[FN181]. See Mitchell (n 169 above); McGee et al (n 106 above), p 109 (skeptical about the current law where the many benefits of incorporation comes with extremely low cost and are vulnerable to abuse); Cortenraad (n 167 above), p 300 (arguing for unlimited liability for shareholders of close corporations, although Wouter's Dutch background makes him not a common law academic in the strict sense, notwithstanding the strong influence of US doctrine optimized in his book).

[FN182]. Hicks (n 173 above), p 321-322 (even among those who chose to incorporate, at least half incorporate for reasons other than limited liability).

[FN183]. Especially since it is the other small businesses (lacking the resources and expertise to protect themselves from insolvency of their trading partners) which are most hard-hit by such irresponsible commercial risk-taking: Ibid. p 327.

[FN184]. Liao Da Yin (n 139 above), p 37; Bai Jian Long, “<<Foreign Language>>” [“One-member Company Should be Determined in Accordance and not Form”] China Securities, 9 January 2006.

[FN185]. Viswanathan (n 64 above), p 2.

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