

A Comparative Study of Legal Framework for Single Member Company in European Union and China

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Abstract

Following the policy of “reform and opening up” since 1978, China has experienced a prolonged and impressive period of economic growth and development in the past nearly three decades. The 2005 Chinese new Company Law which was resulted from the economic and legal reform came into force on January 1st 2006. It is the milestone of recognition to the legal state of single member company in law for the first time in China. While in Europe, it has been commonly recognized by most countries thanks to the EU company law, especially the Single Member Company directive. This article is to explore the peculiarity and similarities between legal system of Single Member Company in Europe and China by analyzing and compare some key provisions in each legal system, thus to shed light on the advantages and drawbacks of the current legal system, so as to inspire law makers in the future.

Keywords: Chinese new company law, single member company, EU company law, Chinese company law

1. Introduction

Since Liechtenstein, the first country in the world acknowledged the legal position of Single Member Liability Company by statute law, this type of company has been legally recognized in an increasing number of countries.

Single member company emerged and developed rapidly in recent years, for the reason of their strong economic, political and legal theoretical basis. As a result, we can dig into their emergence and development from a social and historical point of view. It is helpful to encourage investment, develop economy and facilitate employment. Compared with ordinary types of companies, Single Member Companies' legal characters lie in the singularity of shareholder and the particularity of its corporate governance structure. Thus it increases the possibility for the single shareholder to abuse the rights and damage the interests of companies' creditors. In order to protect the company's creditors, it is necessary to regulate single member company strictly and set up integrated creditors protection rules. Therefore, the legal status for Single Person Companies should be authorized and as well positively standardized in order to seek advantages and avoid disadvantages.

In Europe, single member company has been commonly recognized by most Member States thanks to the unique European Company Law system.

China recognized the legal status and adopted the single member company by legislation when new Company Law took effect on January 1st 2006 which is a significant legislative progress in the legislation history of China. Yet the legislation is to be improved.

This article is to explore the peculiarity and similarities between legal system about single member company in Europe and China.

2. General Introduction of Company Law in Europe and China

2.1 Definition of a Company

Generally, a company is a form of business organization. In English law, and therefore in the Commonwealth realm, (Note 1), a company is a form of body corporate or corporation, generally registered under the Companies Acts or other similar legislation. It does not include a partnership or any other unincorporated group of persons.

In Chinese Company law, the term "Company" as mentioned in this Law refers to a limited liability company or a joint stock limited company established within the territory of the People's Republic of China in accordance with

the provisions of this law.

2.2 Development of the Single Member Company

Single member company, resulting from the rapid development of economics and pluralisms of business practice in daily life, is a unique form of a Limited Liability Company that is commonly recognized by a significant amount of nation states. The European Union, for example has special provisions acts and directives for regulating Single Person Liability Companies. Similarly, China, as the biggest developing country, has also made a breakthrough in both legislative and academic aspects. Since January 2006, the recognition of the Single Person Limited Liability Company came into force in the People's Republic of China.

A single member company is a single person limited liability company that has only one shareholder – either a natural person or legal person. This means that all share ownership within the company is held by a single shareholder, as well as that the identity of the single member must be disclosed, by law, in a registry entry accessible to the public.

According to Adam Smith's "The Wealth of Nations", individuals always weigh their own interest more than the group. When faced with a diverse and dynamic market, single member company can easily adjust its strategy through either competition or quitting the market. This may enable the company to enhance its decision-making efficiency and competitiveness. In another word, single member company is in favor of the company's sustainment and economic development.

2.3 Company Law in Europe

According to Prof. Karel Van Hulle (Note 2): "The official motto of the European Union is truly reflected in the present status of company law in the various Member states of the EU." While one can find some similarity, particularly in those areas where harmonization efforts have taken place, there are still many divergences, which result from different legal traditions but also from different socio-economic developments." In this respect, the internal market is far from complete. There are a number of areas where the lack of harmonization has been the cause of practical difficulties, leading to a number of important rulings by the European Court of Justice. The court's rulings in cases, such as Centros, Überseering and Inspire Art have given rise to an abundant legal literature and have clearly provoked a renewed interest in European company law.

Therefore company law should concentrate on the efficiency and competitiveness of business (Note 3). In pursuit of the modernization of European Company law and the harmonization of national company law, the efforts of the European lawmakers have been and are still characterized by two initiatives: establishing new, tailored company forms completing the EU company law framework; and adopting European Directives harmonizing the different national company laws within EU (Braun, 2009).

2.3.1 Unified European Company Law

(1) European Company

The Council regulation on the statute for a European Company (Note 4) is to create a "European Company" with its own legislative framework, containing rules for a public EU company, called a *Societas Europaea* (SE).

The European Company (Note 5) is now a reality some 3 decades after the initial proposal. Agreement on the SE is one of the priorities identified in the Financial Services Action Plan (FSAP). This regulation talks about formation of the SE, minimum capital of the SE, registered office of SE, laws applicable to SE, registration and liquidation, statutes of the SE, annual accounts of the SE, taxation of the SE, winding-up of the SE.

Council Directive 2001/86/EC (Note 6) is the one which supplements the statute for a European Company with regard to the involvement of employees.

(2) European Cooperative Society

Council regulation on the statute for a European Cooperative Society (Note 7) allows the creation of new cooperative enterprises of natural or legal persons at European level, called *Societas Cooperativa Europaea* (SCE). It mentioned the formation of the SCE, capital of the SCE, statutes of the SCE, transfer of registered office, principle of non-discrimination, registration and disclosure, structure of the SCE, winding up, liquidation, insolvency and suspension of payments.

Council Directive 2003/72/EC (Note 8) supplements the Statute for a European Cooperative Society with regard to the involvement of employees.

(3) Other European Company Forms

Another company form which has long been in the mind of many European academics is the European Private

Company (SPE). Since many complain that the SE is only designed for big, multinational corporations (Braun, 2009), the European Private Company is aiming at providing an attractive counterpart formation for the many small and medium-sized enterprises (“SMEs”) making up the “backbone” of the European economy (Note 9).

In March 2002 the European Economic and Social Committee adopted an opinion on a European Company Statute for SMEs stressing the necessity of this project for SMEs (Note 10). In 2008 this was followed up by a proposal for a Council Regulation on the Statute for a European Private Company (SPE). The proposal however quickly ran into trouble as it was heavily criticized from many sides. For instance, regarding worker involvement, some of the strongest critics of the SPE proposal have been addressing the fear that this legal form may be abused by companies to avoid strict national rules of worker involvement in some member states (Note 11).

After the successful legalization of SE and SCE, along with SPE, there are many other European Company forms appeared, either as an idea or has been drafted in formal proposals: the European Association (“EA”), the European Mutual Society (“SME”) and the European Foundation (“FE”). The other company forms are also firmly on the agenda of the European Commission.

2.3.2 Harmonization of the European Company Law

The national company laws within the EU are overarched in various ways by European Law. Harmonization led to a high level of convergence in particular with respect to public companies, while the rules on private companies still differ considerably. National provisions implementing Directives must be interpreted in accordance with European law (Canaries, 2002). Hence, the literal meaning is of high importance in this context which is definitely higher than in the national laws of different Member States.

The Company Directives and Draft Directives can be ordered with their unofficial numbering, supplemented with reference to the corresponding rules.

Table 1. Company directives in number order and corresponding rules

Numbered Directives	Corresponding Rules
First Company Directive	The Disclosure Directive, DIR68/151/EEC, replaced by the Share Holder Rights Directive
Second Company Directive	The Capital Directive, DIR77/91/EEC, updated by 2006/68/EC and 2009/109/EC
Third Company Directive	The Merger Directive, DIR78/855/EEC
Fourth Company Directive	The Accounts Directive, DIR78/660/EEC
Draft Fifth Directive	The Draft Structural Directive
Seventh Company Directive	The Consolidated Accounts Directive, DIR83/349/EEC
Eighth Company Directive	The Auditor Directive, DIR84/253/EEC
Ninth Company Directive	The Group Directive
Tenth Company Directive	Cross Border Mergers Directive, DIR2005/56/EC
Eleventh Company Directive	The Branch Directive, DIR89/666/EEC
Twelfth Company Directive,	The Single-Member Company Directive, DIR89/667/EEC, replaced by Single Member Company Directive
Thirteenth Directive	Take Over Directive, DIR 2004/25/EC
Drafted 14 th Directive	Transfer of Seat Directive
Shareholder Rights Directive	DIR 2007/36/EC, replacing the First Company Law Directive, DIR 68/151/EEC

The Directives and Drafts may also be arranged according to their subjects, as follows:

Table 2. Company Directives in subject order and corresponding rules

Directives' subjects	Corresponding Rules
Transparency on business matters	11 th and Shareholder Rights Directive
Formation of companies	2 nd and single-member Company
Invalidity of companies	Shareholder Rights Directive
Structure of companies and constitution, competence and function of Company bodies	5 (Note 12)
Company bodies' powers to bind and represent the Company	2 nd
Retention, protection, increase and reduction of Company capital	
Annual accounts and consolidated accounts	4 th and 7 th
Audit and auditors	4 th , 5 th , 7 th , 8 th and 2006/43/EC
Publicity of Company accounts	4 th , 7 th , 11 th and Shareholder Rights Directive
Business transfer via public offer	13 th
Merger	3 rd and 10 th
Division	6 th
Transfer	14 th
Groups	9 th
Single Member Companies	single-member Company
Dissolution	Shareholder Rights Directive
Moving	14 th

2.4 Company Law in China

The old Company Law of the People's Republic of China has not legitimated on some company types which however, have widely existed in China. It caused legal loopholes and disorder in operation.

Nevertheless New Company Law in China which took effect on January 1st 2006 can be seen as a breakthrough in many aspects. As a new "Company Law" with a number of highlights, it shows the world a totally new image of Chinese Legislation on Company Law. China recognized the legal status and adopted the single member company by legislation after new Company Law took into enforcement. This is in conformity with legislative trend in the world and also in line with China's national conditions of the legislation.

3. European Part

3.1 Sole Proprietorships and Single Member Companies

Definition and Main Features of Sole Proprietorships: Sole Proprietorships are called sole trader enterprises as well in British English. A sole proprietorship is a type of business entity which legally has no separate existence from its owner. Hence the limitations of liability enjoyed by a corporation and limited liability partnerships do not apply to sole proprietors. All debts of the business are the debts of the owner. It is a "sole" proprietor in the sense that the owner has no partners. A sole proprietorship means a person does business in his or her own name and there is only one owner. Essentially, a Sole Trader is a private individual, who provides all the finance for the business, and in return has full control of the business, enjoying all the profits, and suffering all the losses.

A sole proprietorship is not a company; it doesn't pay corporate taxes, but rather the person who organized the business pays personal income taxes on the profits made, making accounting much simpler.

(1) Advantages

A sole proprietor may do business with a trade name other than his or her legal name. An entrepreneur may choose the sole proprietorship legal structure because no additional work must be done to start the business. In most cases, there are no legal formalities to form or dissolve a business. A sole proprietor is not separate from the individual. At the same time, all of the individual's non-protected assets (Note 13) are at risk. Furthermore, in most jurisdictions, a sole proprietorship files simpler tax returns to report its business activity. A sole proprietorship often has the advantage of the least government regulation.

(2) Disadvantages

A business organized as a sole trader will likely go through a hard time raising capital since shares of the business cannot be sold. It can also sometimes be more difficult to raise bank finance. Hiring employees may also be difficult. This form of business will have unlimited liability, so that if the business is sued, the proprietor is personally liable. The life span of the business is also uncertain. As soon as the owner decides not to have the business anymore, or the owner dies, the business ceases to exist.

Another disadvantage of a sole proprietorship is that as a business becomes successful, the risks accompanying the business tend to grow. However in some cases a sole proprietor could also form a company, which would give the protection of limited liability but would still, be treated as a sole proprietorship for income tax purposes. (Hamilton, 2005)

Table 3. Advantages and disadvantages of the sole proprietorships

Advantages	Disadvantages
Freedom flexibility	Limited sources of finance
Personal satisfaction	Restricted growth
Secrecy	Full personal responsibility for the decisions and due to Unlimited Liability the debts of the business
Enjoyment of all profits	Higher risks due to unlimited liability
Member control	
Absence of legal formalities when establishing business	
Financial advantages in terms of low taxes, longer period to pay taxes and lower accountancy fee	

3.2 Single Member Companies

Compared with Sole Proprietorships as mentioned above, Single Member Companies, otherwise known as Single Person Limited Liability Company (Note 14) is a single person Limited Liability Company that has only one shareholder who is either natural person or legal one. This means that all the shares have come to be held by a single shareholder and the identity of the single member must be disclosed by an entry in a register accessible to the public.

3.2.1 Similarities

The terms Single Member Companies and Sole Proprietorships can be easily confused. Both names have a single member involved in the company – distinguishing itself from other forms of groups or partnerships.

If a single member company is owned by a single natural person, it shares several same advantages than that of a Sole Proprietorships.

3.2.2 Differences

Various differences between Single Member Companies and Sole Proprietorships can be found. Firstly, a single member company is a legal entity while a sole proprietorship is not as it is not incorporated. Secondly, there are financial advantages in being a Sole Trader in terms of lower taxation payments, longer period in the payment of taxes and lower accountancy fees, and simplified process in establishing a business.

On the other hand, Single Member Companies have to meet all the requirements regulated by the relative provisions of company laws. However it comes also the benefit of legal protection, thus the reduction of risk of the single owner through limited liability as well as its incorporation. A key advantage for an owner of an incorporated business is the idea of separate legal identity, which brings with it the right of a shareholder to limit their liability. But what of the unincorporated business, the business is not seen as separate from its owners, hence they cannot limit their liability, and are personally liable for all the debts of the business (Note 15).

Table 4. Comparison of differences between Single Member Companies and Sole Proprietorships

Single Member Companies	Sole Proprietorships
Limited Liability the debts of the business	Full personal responsibility for the decisions and due to Unlimited Liability the debts of the business
Less freedom flexibility	More freedom flexibility
Lower risks due to limited liability	Higher risks due to unlimited liability
Requirements of legal formalities when establishing companies	Absence of legal formalities when establishing business
No financial advantages in terms of low taxes	Financial advantages in terms of low taxes, longer period to pay taxes and lower accountancy fee

3.3 The Necessity of the Single Member Company Directive

This single-member Directive (Note 16) is necessary because several states did not provide access in their legal tradition to set up companies with only one owner. Some states considered it as an anomaly which was incompatible with the company concept. Therefore they prescribed that a company in which all the shares were owned by one owner was not to be deemed as a company (Note 17).

The function of the Single Member Company Directive:

Company law is only one element in the regulatory environment of business undertakings, the single-member Company Directive is just one of the series directives and regulations in the European Company law framework. Nevertheless, the impact of Company law including the single-member Company Directive which rules on the business community cannot be underestimated. The internal market clearly does not call for uniform Company law. There must be proper competition between legal systems so as to allow for creativity, on the other hand, the ever changing business environment calls for a close monitoring of the market so as to be able to identify those areas where action is needed in order to remove obstacles which stand in the way of progress towards a better functioning internal market, which should ultimately be to the benefit of all parties concerned.

3.4 The Scope of the Single Member Company Directive

The Single Member Company Directive 2009/102/EC, is the replacement for the original 12th Company Directive which imposes upon each individual Member State either to allow one member business with limited liability (Note 18) or preferably to allow a one member private company. The coordination measures prescribed by the Directive apply to Member States' provisions concerning private limited companies.

Where a company becomes a single member company because all its shares have come to be held by a single person, this fact, together with the identity of the single member, must either be entered in a register kept by the company and accessible to the public or be recorded in the file or entered in the register within the meaning of Shareholder Rights Directive 2007/36/EC (Note 19).

The single member exercises the powers of a general meeting of the company. Decisions taken by the single member and contracts between him and his company as represented by him must be recorded in minutes or drawn up in writing.

Prior to this directive, Single Member Companies were not recognized in all Member States, such as Spain, Greece, Italy, Ireland, the UK and Portugal. Nevertheless they have been recognized in many other member states like Denmark, Germany, France, Netherlands, and Belgium. The states which have not already done so must have introduced the other provisions of the Directive in their national laws from 1992.

The Directive requires the Member States:

- (1) Either to give access to the establishment of a one man business with limited liability.
- (2) The state must allow the formation of single person companies in private Limited Liability Company form.
- (3) Where a state also allows single member public Limited Liability Companies the Directive is to apply to these as well.

3.4.1 Recognition of Single Member Company

The Community requirement of recognition of either the concept of Single Member Companies or one man businesses with limited liability derives from the Council's action program for small and medium size enterprises. This action program is designed to stimulate the establishment of such enterprises. The single member directive must be implemented before 1 January 1992. Prior to the directive, only Portugal had recognized the concept of one man business with limited liability since 1986.

The single member Company Directive required all Member States to recognize single member companies, whether they were formed as such or emerged later on by the acquisition of all shares by one member. Before, the existence of single member companies were not generally accepted in Europe. This was somehow due to the attempts to limit abuse of Limited Liability Companies which is taken as opposed to personally liable Sole Traders via minimum member requirements. In fact, these requirements have always attracted circumvention and could not be upheld (Note 20). Furthermore, it provided specific disclosure requirements. Non-compliance with these requirements usually triggers a fine, but does not render the disposition void.

3.4.2 Formation of Single Member Company

A company may have a single member by virtue of its being formed, or by virtue of all its shares coming to be held by a single person. In other words, 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. To the extent that a single person or single member, states choose to recognize the concept, Single Member Companies may be created both *ab initio* (Note 21) and on a subsequent concentration of all shares with only one owner, in the single member company directive.

Despite the title of the Directive, it will apply not only where the sole owner of the company is a natural person but also where the owner is a legal person (Note 22). Thus the Directive will also be relevant in group relationships with 100% owned subsidiaries. So far, the Directive presents no bar to the states maintaining special rules in cases in which a natural person is the single company participant in several companies or a legal person is the only participant in a company (Note 23).

In an earlier draft the Commission wanted to go as far as imposing A ban against one legal person being sole owner of another company (Note 24). These proposals which appeared very formalistic and which undoubtedly would be easy to circumvent have been renounced. Thereby the single-member Company Directive provisions could be focused on their central purpose: to facilitate the access of liability limitation for small and medium size business with one single owner.

3.4.3 On the Subject of Publicity

The registration file of the a Single member company must be recorded in a file in a register, either a public one or a register kept by the company itself that all shares in the company are held by one owner. The public is entitled to know if a company is turned into a single member company via concentration of the entire company capital with one single owner. The Member State may choose to establish publicity via either entry into the public register in which the company has been registered or a notice to such effect via a register with the company itself and which is accessible to everybody, cf. Art 3 of the Directive.

The Directive makes it easy for the sole owner to hold general meetings, the sole owner of the company single handedly exercises the powers conferred on the general meeting in the company organization cf. Art 4(1) and one only need record decisions in writing made in the company. Any national provisions on convening, duty to elect a chairman of the meeting, etc., must give way. The only form requirement is that the decisions made by the sole owner when exercising general meeting powers must either be entered in a record of minutes or be reduced to writing.

It is not directly required in the Directive that it is to appear from company letters and order forms etc. that the company is a single member company. A proposal to this effect in one of the earlier drafts of this directive was abandoned.

4. Chinese Part

4.1 General Introduction of Legislative Development of Single Person Companies in China

A single member company in a sense is still a new concept of company, and it certainly has advantages over other business forms. The advantages of becoming a Limited Liability Company or through a join-investment for any sole trader is evident – i.e. the legal separation of the investor and the company.

During the infant development of the corporation law in China, limited by the theory that corporation is one of the incorporated associations, single member company was not brought into the revision of the corporation law. With the development of economy, more and more small businesses in the form of Single Member Companies appeared in economic life and they became increasingly prominent. As a result, de facto single member company has been recognized by many countries, and it has been developing vigorously all over the world since the case of *Salomon v. Salomon & co. Ltd.* in Britain in 1897. In 1925, Liechtenstein created a precedent for recognizing single member company from the perspective of the legislation, which was followed by many other countries, such as France, Germany etc. It is only until recently, however, single member company has been recognized in the corporation law in China.

In a long period of time, only solely state-owned operating company and solely foreign-owned company are allowed to exist as the form of single member companies. But seen from the development of the world corporation law, there are many advantages to recognize the legal state of single member company. As an example, it provides all the principal parts of investment an equal chance to set up a single member company, which is vital not only in improving Chinese corporation law and free competition in Chinese market economy, but also in bringing about a prosperous private economy and taking part in international market competition. At the same time, it can reduce the dispute caused by the nominal shareholders in de facto single member company.

4.2 Recognition of Single Member Company in China

Within Chinese business activities and other economic dynamics, single member company has, in fact, existed for a long time. However it could not be sufficiently justified by the old company legal system while severe debates exiting in academics.

Nevertheless, on October 27, 2005, the new "Company Law" was formally promulgated. The Act clearly established the single member company system for the first time, with a whole section on the act. Single member company has officially found its legal base in Chinese Company law. This new Company law is a breakthrough both amongst the legislation and in the academics.

According to the interpretation of new Company Law, a Single Member Company is "a Limited Liability Company that has only one shareholder who is either a natural person or a legal one." Although it is a special form of Limited Liability Company which is new to China, single member company has been a developed business form in some Member States in EU for a long time. Meanwhile, in actual civil and commercial activities in China, there have been all types of companies doing business resembling to a single member company.

4.3 Types of Companies in China

In China, types of legal or non-legal companies doing business resembling Single Person Company prior to the new company law are:

4.3.1 Wholly State-owned Enterprise (WSOE)

According to Article 64 of Company Law of PRC of 1993, "WSOE is a company set up by government authorized investment institute or by government authorized agency.

4.3.2 Wholly Foreign-owned Enterprise

According to "Law of Foreign-Capital Enterprise of PRC", a WFOE is a foreign-invested enterprise invested by one foreign legal person or by one foreign natural person and obtained Chinese legal person qualification. This is a kind of typical single member company.

The existing Company Law allows the share transfer between shareholders which means the "derived" single member company (Note 25) is not prohibited by the Chinese Company Law.

According to Article 4 of Law of PRC on Chinese-Foreign Equity Joint Ventures, the form of joint venture is a company. Furthermore, article 23, clause 2 of Regulations for the Implementation of Joint Venture Law stipulates that when one of the parties of joint venture intends to transfer part or all of its paid capital amount, the other parties of joint venture have the priority rights to purchase.

4.4 The Emergence of Single Member Company in China

The emergence of single member company in China is the outcome of the development of market-oriented economy in China. Along with the rapid economic development and mass accumulation of capital and appearance of economic entities with huge investment capability, it enables the possibility of doing business by single member company. This is a legislative progress. (Yun, 2001) The company as an independent entity owning its own assets and legal personality, the pay back of company's debt has nothing to do with shareholder's private property. The principles of company not only reduce the investment risk, but also encourage individual entrepreneurship while at the same time stimulate the investors' enthusiasm. In addition, with the scientific and technology advantage and in-depth classification of professions, investors in emerging fields like communication, internet, electronics, biotechnology and materials of nanometer are all adopting actual Single Person Company with idle shareholders in order to avoid initial business risk. (Yun, 2001) Single Person Company has become the favorable business form in high-tech investment field in China. The inevitable result of evolution of Single Person Company system has proved benefit to both investors and the society at large.

However huge risk still exists in single member company. To deal with this problem, Mr. Jian, a deputy director of Legal System Affairs Committee of Standing Committee of the National People's Congress, introduced that as to single member company the new Company Law includes five areas of guarantees to avoid risks and to ensure trade security.

- (1) Strict capital ascertainment principle should be carried out. The registered capital of single member company must be no less than a hundred thousand Yuan RMB and must be paid up at one time;
- (2) The single member company must be clearly written on its business license that it is exclusively invested by solo natural person or solo legal person;
- (3) One natural person is allowed to have only one Single Person Company which means it is prohibited to set up another Company for one person;
- (4) One Person Company should prepare financial report every fiscal year and have it audited by an officially approved accounting firm;
- (5) In the event of liability dispute, the shareholder of the single member company has the responsibility to prove that his properties are separate from the company's assets. If not the shareholder loses the rights that he is limited to his invested property for the liabilities and he has to take unlimited responsibilities for company's debt occurred.

Such stipulations are stricter than in Europe. But is it the stricter the better? Since China has its special circumstances, the creditability of the business transactions are to be improved, such stipulations are still not enough to regulate single member company. Some points could be shared here:

Firstly, to lower the threshold of market access while underscore post-registry supervision in law.

Single Person Company is in conformity with the development and progress of commercial society. In 1911, N. N. Butler (Note 26) viewed the principle of limited liability as the greatest invention nowadays than the invention of steam engine and electricity (Orhnial, 1982). Conventional legal structure of company is based on multiple ownerships and its legal value is to balance the interests among multiple internal ownerships. The basic content of the conventional company is a balanced structure, namely stockholders meeting, the board of directors and board of supervisors. Shareholder meeting puts different and scattered individual shareholder's wills into company will; board of directors implements the company's will and board of supervisors monitors and oversees the power of shareholder meeting and board of directors. It is the reflection of balanced modern three branches of power.

However, single member company emphasizes more on the separation of the shareholder and the legal person's ownership and the relationship between the board and shareholder. It focuses on the adjustment of the company's interests and the society's interests. If the company fails to handle these relationship well enough, problems occur. This will not only impair the protection to creditors, but also shareholder could easily abuse the company's legal personality to seek illegal gain, get away from liability and strongly weaken the social function of laws.

To encounter these risks and prevent investors from abusing this company form, focus should be put on the post-registry supervision and penalty rather than the demands on market access. These years, the Chinese Government has realized high threshold is inimical not only to free competition but also to the development of market-oriented economy. Therefore, measures under-mentioned should be focused:

- (1) To establish personal property disclosure system by following the lead of foreign countries requiring that when starting business, Single Person Company makes its assets registered and advised for public's reference. To achieve this purpose, some European countries practice is to establish the shareholder individual property

disclosure system and require such property to be registered at the time of company registration and be disclosed for public's reference. Such as in Germany, the company law all set forth the system that the only shareholder of the single member company is registered and disclosed for his personal property. (Hang, 2002) Business status should also be advised to the public in some countries (decision made by shareholders and the agreement signed by the shareholder himself and the company he represented should also be filed). This can be taken for our reference.

(2) To adopt "piercing the corporate veil" from the common law. In the event that the shareholder fails to prove that his own assets are separate from the company's, he has to bear the joint and related liabilities. This is the supplemental handling of the situation that the shareholder's personal asset is not publicized or the publication has controversies. As to issues of abuse of limited liability, in the judicial practice of common law countries, they have adopted this method which also called "unveil the company". That is to allow court to look directly into shareholder's responsibility without considering the company's independent personality. In continental law system, such a method not only exists in judicial practice, but is also written in the legislation. (Sun Qi Xiang, 2004)

Either "to unveil the company" or the direct responsibility, these measures mean to protect the interest of creditors. The beneficial experience of European countries has the referential significance for Chinese company law legislation. According to the new company law of China, the Article 64 (Note 27) stipulates that Shareholder of a single member company has to bear the joint liability if he fails to prove that his assets are not separated from the company's assets.

Secondly, the factual single member company should be included into the category of Single Person Company in the new law.

According to the new Company Law of China, the interpretation of single member company is "the Limited Liability Company that has only one shareholder who is either natural person or legal one." It only recognizes the Single Person Company in formality, but the factual Single Person Company should be embraced as in the EU. For example, many companies in Europe have their substantial shares owned by one legal person or natural person with tiny rest of the shares held by other shareholders. Moreover, most of the family owned companies are actually single person companies. Is there any unified standard as to what is the lowest shareholding proportion of real shareholders in single member company? The way one person companies run their business which is called "exclusively funding and managing" is a way of managing by virtue of the shareholding rights. It generally means that the shareholder owns more than 95% or all of the company's shares which in fact indirectly defines the standard of actual Single Person Company. In 1987, American scholar J. Curhan and W. Davidson and R. Ruri adopted such standard in their survey "Tracing the Multinationals". They set the boundary of shareholding proportion held by subsidiaries between 95% and 100%. Therefore, we can conclude that in terms of the shareholding rights structure, single member company is the company whose 95% to 100% share is held exclusively by one shareholder.

From the practice in China, phenomena that investors circumvent laws by setting up their companies are very serious. For example, they would register the company as having more than one shareholder among whom some are just with their names listed or they would have their spouse, children and other intimate companies as their company's shareholders, but in fact the capital paid by these invited shareholders is not separated from the actual shareholder himself. Or there is only one actual investor while other investments are also made by this one investor. Through internal agreement and internal arrangement, they convey all company ownership to only one investor and the company assets and management are controlled by this one shareholder.

One of the most serious issues arises from such factual single member company. The original intention to add single member company into new Company Law is to pull such company into one person companies to enable them to be regulated by laws. Regretfully, new Company Law still excludes such factual Single Person Company by expressing: "The Limited Liability Company that has only one shareholder who is either natural person or legal one is Single Person Company." Therefore, further regulations might need to be proposed:

(1) Extend the category of Single Person Company by including such factual single member company into the new laws.

(2) Enforce the transformation of such factual one person company through legislation to change it from the general company into "Single Member Company" in order to comply with the new Company Law and to have specific provisions in new Company Law to regulate such companies.

(3) Enforce the supervision of Single Person Company

New Company Law mentions nothing about the external mechanism that functions as a monitor to Single Person

Company. It only regulates that "One Member Company should prepare financial report every fiscal year and have it audited by an officially approved accounting firm."

The existing Company Law emphasizes on company's combination of personal and capital characteristics, but with the unremitting progress of society and technology as well as with the emerging of new researching fields such as communication, Internet, electronics, information, consultation and biotechnology, whether investors could obtain competitive advantages in these fields are not dependent on the size of the investment, but rather on mastering the market trends and the opportunity and people's advantage are more than the capital advantage. Comparatively, single member company has simple organizational structure, fewer management layers and high decision-making efficiency with flexible operation and management advantage which enables its substantial competitiveness and survival ability in the severe competitive marketplace.

The new Company Law's provision that one person company should prepare financial report every fiscal year and have it audited by an officially approved accounting firm is subjectively a good wish to regulate single member company, since such fiscal supervision virtually increases the social cost and is actually hard to be carried out for a long time. Besides, supervision by papers will inevitably render a formality and a placebo.

The monitoring of single member company should be done on a daily basis rather than one time a year. A personal finance monitor should be in place as the prerequisite for setting up the single member company. The very person should be selected from the external circumstance rather than from the company. He is responsible for the daily business and assets evaluation and the monitoring. In case of collusion of the monitor and the shareholder, we should also regulate that the monitor bears the joint and subsequent liability for its investment estimation to ensure the truth of capital amount of single member company.

4.5 The Comparison Result

After the detailed analysis above both within European and Chinese legal frameworks for Single Member Company, it is easy to come to some similarities and differences between the two:

4.5.1 Similarities

- (1) From a general view, both legal systems recognize the legal status of single member company by law, even China only came to this level a few years ago.
- (2) In both legal frameworks, Company Law is one import element on regulating the single member company, notwithstanding it is not the only element is the regulatory environment of business undertakings.

4.5.2 Differences

- (1) In Europe due to the unique European Union legal system, the unified company law at EU level coexists with varies national company laws regarding the single member company. Therefore regulatory competition cannot be ignored. However, they are not functioning separately. Instead they work together in a harmonized approach. While in China, it is mainly the Company Law which regulates the single member company with the nation.
- (2) In Europe formal and informal factual single member companies are both included in the legislation; while in Chinese law, the factual single member companies are not legally recognized due to the strict interpretation of the single member company in the Company Law.
- (3) The threshold of market access for the single member company set by law in China is so much higher than in Europe, which is against the initiative of recognize this form of company in law.
- (4) In China one natural person is allowed to have only one single member company, which is nowhere mentioned in Europe.
- (5) In Chinese company law, personal property disclosure system has not been established unlike in some European national company law.
- (6) Also, "piercing the corporate veil" is not adopted in Chinese company law yet, while it is commonly used in many European countries to function as a supplemental handling of the situation that the shareholder's personal asset is not publicized or the publication has controversies.
- (7) Chinese company law mentions nothing about the external supervision mechanism for single member company, while it is usually included in the European company laws.

5. Conclusions

From the analysis of some of the provisions of the single member company Directive and a single person limited liability company of new Chinese Company Law which was revised in 2005, plus the comparison of advantages

and weak points of Single Member Limited Liability Companies, the advantages outweighs and it has made it a trend to recognize Single Member Companies in Company Law nowadays, not only in Europe and in China, but also in United States, Japan and other countries.

Nevertheless this type of company still has drawback, the relative company laws should accordingly emphasize on the prevention of consequences resulted from those disadvantages. Both legislation stipulating Single Member Companies in EU and China have paid attention to registration, publicity and the necessity of written records system, so do measures to ensure the independence of the company's property, to strengthen a company's financial supervision etc.

Notwithstanding the similarities, differences exist at the same time. Thanks to the special EU Law system, Europe has much more multiple and complicated levels and approaches to stipulate Single Member Limited Liability Companies while its more direct in China to regulate Single Member Limited Liability Companies. However the legal system and the development in Europe obviously is more advanced than in China, China still has a long way to go to reach the harmonization of the legal system and the economic and daily life where Single Member Limited Liability Companies take activities in.

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Notes

Note 1. A Commonwealth realm is a sovereign state within the Commonwealth of Nations that has Elizabeth II as its monarch and head of state, "What is a Commonwealth Realm?" Royal Household. Retrieved October 6, 2009.

Note 2. Head of Unit at the European Commission.

Note 3. Report of the High Level Group of Company Law Experts on a modern regulatory framework for Company law in Europe, November 4, 2002, available at http://europa.eu.int/comm/internal-market/en/Company/Company/modern/consult/report_de.pdf at 27.

Note 4. Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company.

Note 5. Known by the Latin term "Societas Europaea" or SE.

Note 6. Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees [Official Journal L 294, 10.11.2001].

Note 7. Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a SCE.

Note 8. Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

Note 9. Report from the Commission to the Council and the European Parliament on the implementation of the European Charter for Small Enterprises, February 13, 2004, COM (2003) 21 final/2, p.3; cf. Action Plan, fn.7 above, at para.3.5; The European Private Company, Explanatory Memorandum, available at www.etudes.ccip.fr.

Note 10. European Commission, A modern regulatory framework for Company law in Europe - A consultative document of the High Level Group of Company Law Experts, available at <http://europa.eu.int/comm/internal-market/en/Company/Company/modern/consult/1-en.htm>.

Note 11. New Proposal on the European Private Company a cause of concern. European Trade Union Confederation (ETUC). <http://www.etuc.org/a/8484>

Note 12. Drafts are indicated in square brackets.

Note 13. e.g. homestead or qualified retirement accounts

Note 14. Single-Member Company, Single Member Company, Single-person Company, One Man Company, One-man Company refer to the same type of Company in this thesis, due to different translation and usual way of mentioning in Europe and China, different names are used in different situations in this thesis.

Note 15. http://www.examtutor.com/business/resources/studyroom/objectives_and_strategy/legalstructure/2-incorporation.php

Note 16. Twelfth council company law directive of 21 December 1989 on single-member private limited-liability companies (89/667/EEC), replaced by Single Member Company Directive 2009/102/EC.

Note 17. i.e. the corporate status was to be ignored and the sole owner to be regarded as a personal trader with full liability.

Note 18. An odd but probably not absolutely irrelevant legal feature.

Note 19. This Directive is on shareholder rights, replacing the First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.

Note 20. See only *Salomon v A Salomon Co Ltd* (1897) AC 22(HL) where the wife and the five children were nominee shareholders to meet the requirement of seven incorporators. One might wonder, however, if in these childless times the usefulness of those restrictions could revive.

Note 21. The Latin term *ab initio* means from the beginning.

Note 22. E.g. a Company or a fund.

Note 23. i.e. a group relationship of 100 percent owned subsidiary.

Note 24. i.e. chain ownership.

Note 25. So called "derived" single member company by some scholars.

Note 26. The late President of Columbia University.

Note 27. Article 64 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.