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On the Conditions for Applying the Doctrine of Piercing the Corporate Veil and Judicial Practice

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Abstract

The doctrine of corporate personality is a fundamental pillar of modern corporate law. As independent legal entities, corporations possess separate property and are liable with that property for their obligations. Shareholders, on the other hand, bear limited liability, typically up to the amount of their capital contributions. This framework has significantly promoted investment and market development. However, in practice, some shareholders abuse the corporate structure and limited liability by mixing corporate and personal assets, failing to meet capital requirements, or evading debts, thereby harming creditors and distorting the purpose of the corporate system. To prevent such abuses, many countries have established the doctrine of piercing the corporate veil, allowing courts to override the corporate veil and shareholder liability under certain circumstances, holding shareholders personally liable for corporate debts. China's new Corporate Law has further refined these rules, but challenges remain in judicial application, including inconsistent standards, difficulties in proving liability, and varying judicial decisions. This paper examines the concept, theoretical basis, conditions for applying, and judicial practice of the doctrine of piercing the corporate veil. It also offers recommendations based on China's current corporate law framework, aiming to strike a balance between efficiency and transactional security in the corporate system.

Keywords

Company Law; Denial of Corporate Personality; Limited Liability of Shareholders; Protection of Creditors; Judicial Practice

Introduction

The corporate system is one of the most important legal institutions in modern market economies. The principles of corporate personality and limited liability of shareholders form the core foundation upon which the corporate system operates. As a legal entity, a company can enjoy rights and assume obligations in its own name. This separation of corporate assets from shareholders' personal assets helps to control investment risks and significantly enhances the ability to pool capital. It can

be said that without the concept of corporate personality, it would be difficult to establish a modern capital market.

However, any system can be abused. Some shareholders, especially controlling shareholders, use the corporate structure to engage in improper activities, such as mixing personal assets with corporate assets, maliciously withdrawing capital contributions, avoiding debt obligations through shell companies, and even transferring assets through affiliated companies. In such cases, if we rigidly adhere to the principles of corporate independence and shareholders' limited liability, the interests of creditors will be severely harmed, and the corporate system will become a tool for evading responsibilities. Therefore, how to ensure the efficiency of the corporate system while preventing its abuse is an important issue that corporate law must address.

The doctrine of piercing the corporate veil emerged against this backdrop. This doctrine does not outright deny a corporation's legal personality. Instead, it "peels back the corporate veil" in specific cases, breaking down the barrier between the corporation and its shareholders, thereby holding shareholders who abuse this structure directly liable. Its purpose is to correct systemic distortions and uphold fairness and justice. In China, the doctrine of piercing the corporate veil has evolved from being introduced theoretically to being legally recognized and then further refined through judicial decisions. Especially as market transactions become more complex, the importance of this doctrine continues to grow. However, practical challenges remain, such as unclear application criteria, excessive caution, or overly broad application in judicial practice. Therefore, a systematic study of this doctrine holds both theoretical and practical significance.

I. Overview of the Doctrine of Piercing the Corporate Veil

(I) The basic nature of the corporate legal person status and the shareholder limited liability system

The doctrine of corporate personality means that after a company is legally established, it operates as a legal entity separate from its shareholders. It possesses independent property rights and can engage in civil and commercial activities and assume legal responsibilities in its own name. The Company Law of the People's Republic of China establishes the legal status of companies as corporate entities, enabling them to assume debt responsibilities independently. This means that, in principle, a company's debts are covered by its own assets, while shareholders bear limited liability up to the amount of capital they have contributed. The system of limited liability for shareholders is considered one of the most revolutionary innovations in modern corporate law. It helps reduce risks for investors, encourages capital accumulation, and improves the efficiency of resource allocation in society. Especially in joint-stock companies and large enterprises, the principle of limited liability provides a legal framework for the development of capital markets.

Investors are not required to bear unlimited liability for a company's failures, so they are more willing to invest. However, the independence of corporate personality and limited liability for shareholders are not absolute. Corporate law essentially grants certain privileges to companies, but these privileges depend on the company functioning as an independent entity in accordance with the law. If shareholders abuse this system to engage in fraud, evade legal obligations, or harm third parties, the corporate personality can be misused. In such cases, corporate law must provide mechanisms to correct these abuses.

(II) The concept of the doctrine of piercing the corporate veil

The doctrine of piercing the corporate veil, also known as the "discovery of the corporate mask" doctrine, refers to a legal mechanism under which, when shareholders abuse the corporate entity's independent status and limited liability to severely harm the interests of creditors or the public, courts may disregard the corporate entity's independence and hold shareholders personally liable for the company's debts. The core of this doctrine is not to completely abolish the corporate entity, but rather to hold those who improperly exploit the corporate structure accountable in specific cases. In other words, piercing the corporate veil is an exceptional measure designed to prevent the abuse of legal formalities. For example, if a company's shareholders use the company's accounts for personal purposes, making it impossible to distinguish between company assets and personal property, and then dissolve the company to avoid debts, protecting shareholders solely based on the corporate entity's independence would violate the principle of fairness. In such cases, courts can override the formal boundaries between the company and its shareholders and hold the shareholders directly responsible.

(III) Characteristics of the corporate personality denial doctrine

Firstly, this doctrine is exceptional in nature. The principle of corporate personality remains the norm, and the denial of corporate personality should only be applied in special circumstances. It cannot be arbitrarily expanded, as doing so would undermine the foundation of the corporate system. Secondly, this doctrine is case-specific. When a court denies a company's corporate personality, it does not mean that the company permanently loses its legal status. Instead, it applies only in specific cases regarding particular liability relationships. Thirdly, this doctrine serves a remedial purpose. Its main function is to protect creditors who have suffered harm due to shareholders' abusive behavior, rather than serving as a general rule for allocating liability.

(IV) The Development of the Doctrine of Denial of Corporate Personality in China

In China, the doctrine of piercing the corporate veil originally stemmed from foreign legal theories. In 2005, the Company Law explicitly stipulated in Article 20 that "where shareholders of a company abuse the company's independent legal status and limited liability of shareholders to evade debts, thereby seriously harming the

interests of the company's creditors, they shall bear joint liability for the company's debts." This provision marked the official establishment of this doctrine at the legislative level. Subsequently, the Judicial Interpretation of the Company Law (III) and related judicial decisions further refined the criteria for applying this doctrine, especially in areas such as one-person companies and situations where there is a merger of identities between related companies. In recent years, as market structures have become more complex and related-party transactions have increased, the doctrine of piercing the corporate veil has become an important tool in judicial practice for protecting transactional security.

II. Theoretical Basis of the Doctrine of Denial of Corporate Personality

(I) The principle of non-abuse of rights

The corporate personality doctrine itself is a right granted by law. However, no right should be abused. Just because shareholders enjoy limited liability, it doesn't mean they can use the corporate structure to commit fraud or evade responsibilities. The theory of rights abuse holds that when the exercise of a right clearly deviates from its intended purpose and harms the legitimate rights of others, the law has the authority to impose restrictions. The purpose of the corporate system is to promote investment and economic development, not to provide cover for dishonest behavior. Therefore, when shareholders exploit the corporate personality to avoid debts, the doctrine of piercing the corporate veil becomes an important tool to prevent the abuse of rights.

(II) Principles of fairness and good faith

The basic principles of civil and commercial law emphasize fairness and good faith. If shareholders engage in improper conduct by controlling the company, yet avoid liability under the principle of limited liability, it leads to a conflict between legal form and substantive justice.

The essence of the corporate personality denial doctrine is to restore fairness in liability by going beyond formalities. For example, when there is a significant lack of capital, deliberate withdrawal of funds, or the creation of shell companies for malicious purposes, failing to hold shareholders accountable would severely undermine the interests of creditors who rely on the company's structure.

(III) The Theory of Interest Balance

Company law is essentially a law for coordinating the interests of various parties. It must protect investors' enthusiasm for investing while also ensuring the safety of creditors' transactions. The limited liability system encourages investment, while the doctrine of piercing the corporate veil corrects imbalances in the system. Thus, the doctrine of piercing the corporate veil does not negate limited liability but rather establishes a balance between shareholders' interests and creditors' interests. This doctrine is applied only when the corporate system is abused to prevent overall

systemic imbalances.

(IV) The Perspective of Law and Economics

From the perspective of law and economics, the doctrine of piercing the corporate veil helps to reduce moral hazards. If shareholders can use the corporation as a shield to avoid liability, it encourages opportunistic behavior and increases transaction costs in the market. To mitigate these risks, creditors may raise transaction prices or even reduce the frequency of transactions, thereby harming overall market efficiency. By holding shareholders accountable under certain circumstances, the doctrine of piercing the corporate veil increases the cost of violations, enhances trust among market participants, and ultimately contributes to maintaining market order and efficient resource allocation.

III. Analysis of the Conditions for Applying the Doctrine of Corporate Personality Denial

As an exception to the principles of corporate independence and shareholders' limited liability, the doctrine of piercing the corporate veil must be applied with great caution. If applied too broadly, it will undermine the stability of the limited liability system and discourage investment. If applied too narrowly, it will fail to prevent the abuse of corporate structures. Therefore, judicial practice must strike a balance between upholding the foundations of the corporate system and protecting creditors' interests. In line with Article 20 of China's Company Law and relevant judicial interpretations, the application of the doctrine of piercing the corporate veil generally requires fulfillment of several key conditions.

(I) Subjective requirements: Shareholders must have substantial control over the company

The doctrine of piercing the corporate veil primarily applies to shareholders who abuse the corporate structure, especially controlling shareholders, actual controllers, or shareholders of one-person companies. This is because only those with control over a company's operations, finances, and decision-making are likely to use the corporate form to avoid liability. In typical multi-shareholder companies, if a shareholder neither participates in management nor controls key corporate matters, it's difficult to prove that they're abusing the corporate structure. In contrast, in one-person companies, family-owned businesses, or corporate hierarchies, shareholder control is highly concentrated, making it easier for corporate assets to be misused for personal purposes and for corporate decisions to be completely subordinated to the shareholder's will.

For example, in a one-person limited liability company, if the shareholder cannot prove that the company's assets are separate from his or her personal assets, the risk of commingling of personalities is likely to be presumed under the rule of reversed burden of proof. Therefore, the existence of a controlling relationship is an important prerequisite for invoking the doctrine of piercing the corporate veil.

(II) Behavioral requirements: The shareholder engages in conduct that abuses the corporate personality

Merely having shareholders control the company is not sufficient to justify the application of the doctrine of corporate personality denial. More importantly, the shareholders must engage in "abusive" behavior. Common forms of abuse in judicial practice include the following:

1. Commingling of assets

Property commingling is the most typical and common grounds for denying corporate personality. It manifests as a lack of clear boundaries between a company's assets and those of its shareholders or affiliated companies. This includes using shared accounts, arbitrary transfers of funds, chaotic accounting, and unclear asset records. Property commingling undermines the foundation of a company's independent financial responsibilities, making it difficult for creditors to assess the company's actual ability to repay debts. As a result, courts attach great importance to this issue. If a company essentially serves merely as the shareholder's personal "wallet," then the concept of corporate personality loses its meaning.

2. Significantly insufficient capital

Significant capital deficiency refers to a situation where a company's capital level is clearly insufficient to cover its operational risks at the time of establishment. Shareholders, knowing full well about the insufficient capital, still use the company to engage in high-risk activities, thereby shifting the risk of failure to creditors. It's important to note that insufficient capital does not necessarily equate to operational losses. Market competition inherently involves risks, and a company's losses do not necessarily lead to the denial of its legal personality. The key lies in whether shareholders deliberately exploit a weak capital structure to avoid responsibilities.

3. Withdrawing capital contributions or making false capital contributions

After shareholders contribute their capital, they withdraw it through fictitious transactions or capital reflows. This makes it appear as though the company has the ability to repay its debts, but in reality, the company becomes a shell corporation. Such behavior essentially undermines the company's creditworthiness.

4. Using affiliated companies to evade responsibilities

In corporate group operations, some controllers transfer assets, split businesses, or deliberately cause debtors to go bankrupt by setting up multiple affiliated companies, thereby achieving liability separation. This "multi-layer corporate structure" can also become a target for claims of piercing the corporate veil.

(III) Result requirement: Serious harm to the interests of creditors

Not all instances of corporate abuse automatically trigger the doctrine of piercing the corporate veil. The law explicitly requires that the actions of shareholders must "seriously harm the interests of creditors." This requirement reflects the principle of restraint in applying this doctrine. "Serious harm" typically includes situations where the company is no longer able to pay its debts, creditors are unable to collect

their debts due to the shareholders' abusive actions, company assets are illegally transferred, or the corporate structure is used as a tool to evade debts. If the harm to creditors is not significant, or if relief can be obtained through ordinary breach of contract or tort laws, courts generally will not apply the doctrine of piercing the corporate veil.

(IV) Causal relationship requirement: There must be a direct connection between the abusive act and the harmful consequences.

Creditors cannot claim piercing the corporate veil merely because the company is unable to pay its debts. They must also prove a causal relationship between the shareholders' fraudulent actions and the damage to the creditors' interests. For example, if a company goes bankrupt due to normal market conditions, with no connection to the shareholders' individual actions, piercing the corporate veil should not be applied. Limiting liability can only be overridden when the damage to creditors is directly caused by actions such as commingling of assets or fraudulent withdrawal of capital.

(V) Procedural and Evidentiary Issues

In judicial practice, one of the challenges in cases involving the piercing of the corporate veil is related to burden of proof. Creditors often have difficulty accessing a company's internal financial records. Therefore, in certain situations, courts shift the burden of proof to the relevant party. For example, in the case of a one-person company, the shareholder must prove that their personal assets are separate from those of the company; otherwise, they may face adverse consequences. This rule helps address the issue of information asymmetry. However, courts must apply it carefully to prevent the piercing of the corporate veil from becoming a general mechanism for imposing liability.

IV. The Current Judicial Practice of the Doctrine of Denial of Corporate Personality in China

(I) General trend in judicial application: cautious application, but with expanding scope

From the perspective of judicial trends in China, courts generally adopt a cautious approach toward the doctrine of piercing the corporate veil. This is because the independent legal personality of corporations and limited liability remain fundamental to the market economy. Overstepping these principles could lead to instability in market expectations. However, with the increasing number of one-person companies, family-owned businesses, and affiliated enterprises, instances of corporate personality confusion have become more common. As a result, courts have begun to expand the application of this doctrine in certain cases, including disputes over debts of one-person companies, cases of corporate personality confusion between affiliated companies, cases of fraudulent debt evasion, and cases of false capital contributions or withdrawal of capital. Overall,

China's judicial practice follows a pattern of "conservative principles with targeted exceptions."

(II) One-person companies have become a common area for denial of corporate personality

A one-person limited liability company is considered to pose the highest risk of corporate personality confusion, due to the close overlap between the shareholder's personal assets and those of the company. The Company Law explicitly states that if a shareholder of a one-person company fails to prove the independence of their assets, they shall bear joint liability for the company's debts. In practice, many cases involve issues such as the mixing of company and personal accounts, lack of financial records, unclear distinction between revenues and expenses, and decisions made solely by the individual shareholder. Courts generally require shareholders to meet a higher standard of proof to prevent one-person companies from being used as tools for evading responsibilities.

(III) The issue of corporate personality confusion among affiliated companies is becoming increasingly prominent

With the globalization of corporate operations, it has become common for affiliated companies to operate under unified systems in terms of office management, finance, and staffing. If such practices are merely for operational convenience, they may not constitute a violation of legal requirements regarding corporate separateness. However, if assets are arbitrarily transferred between affiliated companies and responsibilities are deliberately separated, these entities may be held jointly liable. In recent years, courts have begun to adopt the concept of "horizontal piercing of the corporate veil." This means that not only can shareholders be held liable, but responsibilities can also be extended to affiliated companies, thereby cracking down on attempts to evade debts by using corporate structures.

(IV) Major issues in judicial practice

尽管我国公司法人格否认制度在立法和司法层面不断完善，但在具体适用过程中仍存在不少现实困境，这些问题直接影响制度的统一性与可预期性。

Although China's system of denying corporate personality has been continuously improved at both the legislative and judicial levels, there are still many practical challenges in its actual application. These issues directly affect the uniformity and predictability of the system.

1. The criteria for judgment are not completely consistent

Different regions and courts vary in their approaches to determining issues such as corporate personality confusion, insufficient capital, and related-party relationships. Some courts place greater emphasis on protecting creditors' interests and apply a more lenient standard for determining property confusion. Other courts, however, adopt a stricter approach, denying corporate personality only when there is extremely substantial evidence to support such a conclusion. For example, regarding situations like "companies and shareholders sharing office space" or "financial

personnel holding dual roles," some courts consider these practices to be merely business efficiencies and insufficient to prove corporate personality confusion. Other courts may take these factors into account to determine whether a company lacks independence. The lack of uniform standards makes it difficult for businesses to accurately assess legal risks.

2. It is difficult for creditors to provide evidence.

Cases involving the denial of corporate personality essentially involve a company's internal control structures and financial records. These pieces of evidence are typically held by the company and its shareholders. Ordinary creditors usually have access only to information about external transactions, and it's difficult for them to obtain complete accounting records, information about the flow of funds, or details of internal decisions. Although the burden of proof is sometimes reversed in cases involving single-person companies, in multi-shareholder companies and corporate groups, creditors still face the practical obstacle of "knowing that something might be wrong, but being unable to prove it." As a result, many cases where the denial of corporate personality would be applicable cannot proceed due to insufficient evidence.

3. There is a risk of overextension in the application of these regulations

In some cases, creditors simply attribute a company's operational failures to the shareholders' responsibilities, attempting to equate the company's inability to pay debts with a breach of fiduciary duty by the shareholders. If handled improperly by the courts, this could lead to the wrongful conclusion that a company's normal business risks constitute a breach of fiduciary duty. It's important to note that a company's bankruptcy, losses, or operational failures do not necessarily indicate that shareholders have abused their fiduciary duties. Market competition is inherently uncertain. Overusing the concept of breach of fiduciary duty could undermine the shareholder liability system, thereby discouraging entrepreneurship and investment.

4. The rules regarding the denial of corporate personality in affiliated companies are not yet fully developed

As corporate consolidation becomes more widespread, the boundaries of responsibilities between parent companies, subsidiaries, and affiliated firms become increasingly complex. In practice, some controllers use multiple corporate entities to transfer assets and allocate debts. However, current laws regarding "horizontal piercing of the corporate veil" remain relatively limited. Although courts have explored the concept of joint liability among affiliated companies in certain cases, there is still a lack of systematic and unified guidelines regarding the criteria for determining liability, the scope of liability, and the rules for proving it.

V. Ways to Improve the Doctrine of Corporate Personality Denial

(I) Further clarify the standards for judicial application

To enhance the stability of the system, it is necessary to further refine the criteria for applying the doctrine of piercing the corporate veil through judicial interpretations and guiding cases. In particular, clearer rules should be established in the following areas:

1. Detailed criteria for determining commingling of assets

Judgments can be made based on various factors such as account independence, bookkeeping completeness, asset registration, and the frequency of financial transactions, rather than relying on just one aspect.

2. Clear criteria for determining significant capital insufficiency

It is necessary to distinguish between normal business failures and deliberate operations with insufficient capital. A comprehensive assessment should take into account industry risks, business scale, and debt structure.

3. Improvement of the rules regarding the extension of liability to affiliated companies

Establish a clearer mechanism for determining responsibilities in situations involving centralized control, asset transfers, and attempts to evade responsibilities within group companies. Unified standards help reduce inconsistent rulings in similar cases, thereby enhancing the authority and predictability of corporate law applications.

(II) Improving the mechanism for allocating the burden of proof

To address the difficulty creditors face in providing evidence, it would be appropriate to introduce more reasonable rules for dynamically allocating the burden of proof.

For example, after creditors establish preliminary evidence of asset commingling, the company or its shareholders can provide evidence to prove that the assets are separate. Companies that refuse to submit accounting records or deliberately conceal information may face adverse consequences. Procedures such as court subpoenas and audit orders should be strengthened to improve the ability to determine facts. This mechanism not only reduces the barriers for creditors to assert their rights but also avoids disrupting corporate systems by completely reversing the burden of proof.

(III) Strengthening corporate information disclosure and financial compliance

The core of a company's independent legal personality lies in its financial independence. Therefore, transparency in corporate governance is crucial. Transparency in corporate operations should be improved by enhancing systems for company registration, annual report disclosure, financial auditing, and record-keeping regarding shareholders' responsibilities.

In particular, single-person companies, family-owned businesses, and companies in high-risk industries should consider strengthening measures such as independent account management, annual financial audits, disclosure of large-scale related-party transactions, and oversight of capital transactions by controlling shareholders.

Strengthening regulations from the outset is a more effective way to reduce the risk of abuse than trying to deny liability after the fact.

(IV) Strengthen legal sanctions against malicious debt evasion

Regarding malicious acts such as using corporate structures to evade debts, transfer assets, or declare false bankruptcy, there should be greater coordination between civil, administrative, and criminal liabilities. While the doctrine of piercing the corporate veil primarily addresses civil liability issues, for serious violations, merely requiring debt repayment may not be sufficient as a deterrent. Therefore, the following measures can be strengthened within the existing framework: inclusion on lists of dishonest entities; restrictions on high-end consumption; tougher penalties for bankruptcy fraud; and improved coordination between tax and regulatory authorities.

(V) Balancing the Restraint of the System and Its Protective Functions

The essence of the corporate personality denial doctrine lies in "correction," not "substitution." Institutional design must always prioritize limited liability as the norm, with personality denial serving as an exception. When improving these systems, it's important neither to allow shareholders to abuse their powers nor to undermine the foundation of corporate governance by overprotecting creditors. Therefore, future reforms should adhere to the principles of "strict standards, targeted enforcement, focused regulation, and protection of integrity."

VI. Conclusions

The doctrine of piercing the corporate veil is an important supplementary mechanism in modern corporate law, built upon the principles of corporate independence and shareholders' limited liability. Its core purpose is to prevent this doctrine from being exploited as a tool for evading responsibilities. From a Hanseatic legal perspective, the corporate system is designed to promote capital formation and economic development. However, without proper restrictions, shareholders may harm creditors through practices like commingling of assets, manipulation of capital, and controlled relationships, thereby undermining market fairness. In China, the doctrine of piercing the corporate veil has played a significant role in protecting creditors and combating fraudulent debt evasion, especially in the areas of one-person companies and related companies. Nevertheless, issues such as inconsistent judicial standards, difficulties in proving claims, and inadequate rules regarding related-party liabilities continue to limit its effectiveness. In the future, China should continue to uphold the fundamental principles of the corporate system while improving the doctrine's applicability by clarifying standards, optimizing evidence requirements, enhancing corporate governance transparency, and improving accountability for related companies. Ultimately, the doctrine of piercing the corporate veil does not undermine the corporate system but rather serves as a necessary corrective to ensure its proper functioning. Only by striking a balance

between encouraging investment and preventing abuse can we truly preserve the legal foundations of a modern market economy.

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