

On the Perfect Path of the Company's Legal Person Deny System

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ABSTRACT

The corporate personality denial system originated in the United States in the 20th century and has been recognized by most countries since its development. With the rapid development of my country's market economy, the abuse of corporate personality often occurs, but there are still many defects in the system of corporate personality denial in our country, which cannot comprehensively protect the interests of creditors and social public interests. Therefore, the author believes that it is necessary to improve the system of corporate personality denial from the legislative and judicial levels.

Keywords: *Company legal personality denial, Creditor, Defect.*

1. AN OVERVIEW OF THE SYSTEM OF CORPORATE PERSONALITY DENIAL

1.1. Legal Personality Denial System

The legal personality denial system first attracted the attention of the world from the establishment of the British legal person system, which was finally established in the United States, and later developed in many countries. It is the most widely used in countries such as Germany and Japan. The system of denial of legal personality began to gradually enter the public eye in the case of "Salomon v. Salomon Company". In 1987, the Hengping Court in the United Kingdom determined the independent legal personality of Salomon Company, and Salomon personally does not bear any responsibility for the company and its creditors. This is a classic case in the history of company law. It is widely used to illustrate a core value of company law - the personality of the company is independent of the personality of the shareholders. The judgment result of this case is also considered to bring hidden dangers to the company's legal issues in practice. Individual shareholders may sacrifice the rights and interests of creditors in order to seek illegitimate interests, and the result is very unfair to creditors.

In order to overcome this hidden danger and correct the abuse of corporate personality, the US court established the system of denying corporate personality in the case of "United States v. Milwaukee Refrigerated

Transportation Company" in the early 20th century. The United States calls the corporate personality denial system "piercing the corporate veil"^[1]. The so-called corporate legal personality denial system means that in a specific legal relationship, when a company shareholder abuses the legal personality or the limited liability status of a shareholder and other specific circumstances, seriously infringing on the interests of the company's creditors, the company's legal personality should be denied, and shareholders need Jointly and severally liable^[2]. The system has developed so far and has been recognized by most countries. This system is based on the principle of independence of legal person personality and belongs to a kind of post-event relief legal regulation.

1.2. The System of Denial of Corporate Personality in My Country and Its Application Conditions

My country's corporate personality denial system is embodied in the third paragraph of Article 20 of the "Company Law", "A company shareholder who abuses the company's independent status as a legal person and the limited liability of shareholders, evades debts and seriously damages the interests of the company's creditors, shall be jointly and severally liable for the company's debts"^[3]. This clause is the embodiment of the specific content of the system at the legislative level, and the fundamental purpose of its establishment is to protect the legitimate rights and interests of creditors.

With reference to the relevant literature and scholar's works, the author believes that the constituent elements of the system of corporate personality denial can be divided into the following four conditions.

First, the company must be legally and validly established. Because only a legally and validly established company has the status of a legal person, loopholes will be left for the shareholders of the company and the phenomenon of abusing the independent legal personality of the company to evade legal obligations or evade contractual obligations. Second, in terms of behavior, shareholders have abused the company's legal personality and the limited liability of shareholders. The main manifestations of these behaviors are: mixed personality, mixed property, parent company's control over subsidiary companies and so on. Third, as a result, the above-mentioned behavior of shareholders seriously infringes the interests of creditors. According to the provisions of paragraph 3 of Article 20 of the Company Law, if the degree of damage to the interests of creditors does not reach a serious level, it is not necessary to apply this system. Fourth, there is an objective and inevitable causal link between the behavior of shareholders who violate the law and abuse the company's independent legal personality and the damage to the interests of the company's creditors ^[4].

2. THE DEFECTS IN OUR COUNTRY'S CORPORATE PERSONALITY DENIAL SYSTEM

In 1993, my country's first "Company Law" was born. With the continuous development of the market economy, the theory of company law has also been continuously improved and matured. At present, the fourth amendment of the company law in 2018 is being implemented. Although the latest version of the "Company Law" has made provisions on the system of corporate personality denial, there are still some problems in practice. It is mainly reflected in three aspects: the applicable object is not comprehensive enough; ignoring the maintenance of national interests and social public interests; judicial standards in judicial practice are not uniform.

2.1. The Applicable Object of The System of Disregard of Corporate Personality Is Not Comprehensive Enough

The first defect of corporate personality denial system is that the applicable object is too narrow. Article 20(3) of the "Company Law" applies only to the creditors of the company. If the interests of the creditors are seriously damaged, the shareholders need to be jointly and severally liable for the debts of the company, which is a forward denial of the company's legal personality. However, in reality, there are other cases of abuse of the

company's legal personality, such as the mixed personalities of the affiliated company and the company, and the affiliated company needs to be jointly and severally liable for the company's debts, which is a horizontal denial of the company's legal personality. For example, the controlling shareholder or the actual controller controls its subsidiary to transfer benefits, which in turn makes the subsidiary lose its legal personality. In this case, the subsidiary cannot be used as a tool for the controlling shareholder to evade debt, but should bear joint and several liability for its controlling shareholder. Reverse denial of corporate legal personality. If the applicable object is too narrow, the legal provisions cannot cover various situations of personality denial that occur in reality, and the object that should be protected cannot be protected in judicial practice.

2.2. Legislative Provisions Neglect The Maintenance of National Interests and Social Public Interests

The purpose of establishing the system of corporate legal personality denial is to prevent or sanction the abuse of the company's independent legal personality. The creditor of the company is the main body it maintains directly, and the national interest and social public interest should be its indirect target. But the current legislation in our country focuses on safeguarding the interests of creditors. If a company shareholder abuses the company's legal personality, and damages the interests of the state and the public, there is no clear legal basis for regulating their behavior. Then the applicability of the corporate personality denial system will be reduced.

2.3. The Judicial Standards Are Not Unified In Judicial Practice

Among the constituent elements of the system of denial of corporate personality, the system can only be applied if the interests of creditors are seriously damaged. However, the company law does not give too much explanation to the word "serious", and it is generally left to judges at the discretion of the judge. Judgments are bound to be different. Moreover, according to the analysis of the existing judgments, the people's courts generally do not pay attention to the result element of "severe damage to the interests of the creditor", and focus on demonstrating the confusion of personalities in similar cases, while the constitutive element of the result only stays on the presumption of superficial facts ^[5]. Then, when the personal, national and social public interests are actually damaged, the system of denying corporate personality cannot provide support, and the consequence is that some people take advantage of legal loopholes to damage other people's interests, social public interests

and even national interests, and can get away with escaping their legal responsibilities.

3. THE NECESSITY OF PERFECTING THE SYSTEM OF DENYING THE LEGAL PERSON'S PERSONALITY IN OUR COUNTRY

Although the law has already covered the system of denying corporate personality, but there is still a lack of clear provisions on the subject and conditions of application in legislation. And it is impossible to provide specific guidance for judicial practice. Therefore, it is necessary to improve the system of denying corporate personality.

Perfecting the system of denying corporate personality is an extension of corporate social responsibility, which is of great significance to strengthening the company's social responsibility. The social responsibility of a company is that a company cannot create more profits for its shareholders as its sole goal of development, but also takes into account social interests to a certain extent, such as the interests of creditors, the interests of employees, the interests of consumers, the interests of society and the public. We should pay more attention to groups other than the company's shareholders^[6]. The company's legal personality denial system just makes up for the shortcomings of the legal person system, strengthens the ethics of capital and business ethics, and uses the legal system to regulate the legitimacy of the company's source of wealth, so that the company can consciously abide by legal rules and assume social responsibilities.

For example, in pursuit of high profits and high returns, some companies sacrifice the environment, seriously affecting the lives of nearby residents and harming social and public interests. In this case, we can pursue the responsibility of the shareholders behind the company through the system of legal personality denial to achieve a balance between the interests of shareholders and the public interest. The improvement of the legal person status system has also greatly optimized the business environment of the company, promoted the vitality of the development of the market economy, and safeguarded the social and public interests and the legitimate rights and interests of creditors.

4. THE PERFECT PATH OF MY COUNTRY'S CORPORATE LEGAL PERSON DENIAL SYSTEM

4.1. Expand The Application of The System of Corporate Legal Personality Denial

By referring to the relevant literature and scholar's works, the author summarizes the application of the

system of corporate personality denial mainly involves the following three aspects: significant lack of capital; corporate personality confusion; excessive control by shareholders.

4.1.1. Significant Lack of Capital

Chinese academic circles have different standards for the identification of a company's significant lack of capital, but most scholars hold that a company's capital cannot be matched with the company's operating scale, which constitutes a significant lack of capital. The current "Company Law" has cancelled the minimum registration requirements for companies. The starting point of the system is to encourage everyone to start a business and promote the active development of the market economy. However, the registered capital subscription system has laid a hidden danger for companies to abuse their legal personality. If the actual capital of the company does not match its operating scale in the process of operation, it is easy to infringe on the interests of creditors^[7]. Therefore, it is necessary to stipulate the applicable situation of "insufficient company capital" in the legal system.

4.1.2. Corporate Personality Confusion

The confusion of corporate personality is the formation of corporate personality. The most fundamental criterion for determining whether the personality of the company and the shareholders are confused is whether the company has independent will and independent property. In reality, there are three situations in which the company's personalities are mixed up: (1) Shareholders use the company's property for private use without compensation. For example, there is no reasonable reason for the company to transfer money to shareholders; the company advances large consumption funds such as car purchases and houses on behalf of shareholders; the company reimburses shareholders for shopping invoices for daily family life; shareholders use the company's property to repay shareholders' personal debts. (2) The shareholders' personal account books and the company's financial account books are not distinguished, so that it is impossible to distinguish the company's property from the shareholders' property. The affiliated companies have substantial confusion in terms of personnel, business scope and financial funds, which seriously affects the company's ability to pay off external debts and seriously damages the legitimate rights and interests of creditors. (3) The company's property is recorded in the name of the shareholder, and the shareholder can freely occupy and use the property of the company. For example, the company registers the company's fixed assets, real estate or vehicles in the name of the shareholders, resulting in the company's untrue capital contribution. If the company is insolvent, it will be very unfavorable to the creditors.

4.1.3. Controlling Shareholders Over Control the Company

The controlling shareholders of the company have excessive control over the company, which makes the company completely lose its independence and evolves into a tool for the controlling shareholders to make money, thereby evading its own legal responsibilities and seriously damaging the interests of the company's creditors. In this case, the company's personality should be denied, and the shareholders who abuse their control rights should be jointly and severally liable for the company's debts. Common situations in practice include: (1)Affiliated transactions between the parent company and its subsidiaries or between related companies to transfer benefits to each other; (2)In order to avoid debts, the company withdraws funds to reduce the company's capital, and then establishes a new company with similar or the same business purpose. Company; (3)In order to avoid debts, the company dissolves the original company and establishes a new company by using the equipment and personnel of the original company^[8].

4.2. Improve The Judicial Interpretation of Company Law

Although the "Minutes of the Nine People's Meeting" made an expansive interpretation of the company's personality denial system, the "Minutes of the Nine People's Meeting" is not a judicial interpretation and cannot be cited as a basis for judgment in judicial practice^[9]. The process of law revision is a long process. The author suggests that judicial interpretation should be improved before the introduction of the new company law. The Supreme People's Court should use judicial interpretation to improve the system of corporate personality denial to avoid disputes in current theoretical research and practice.

4.3. Carrying Out The Inversion Principle of Burden of Proof

My country's civil procedure law mainly adopts the principle of "whoever claims, who shall provide evidence", and the general creditors are not members of the company. Under normal circumstances, it is difficult to find evidence that shareholders abuse the company's personality, such as proving the company's property and shareholders. In the case of commingling of property, creditors cannot obtain evidence of bank accounts of the company or shareholders^[10]. Therefore, in the judicial practice of the corporate personality denial system, it is difficult for the general creditor's claim to be supported by the court. If the creditor who is actually damaged in the lawsuit cannot find evidence to prove that the shareholder has infringed on his own interests, then the

party who is actually damaged will face the result of losing the lawsuit, resulting in factually unfair consequences. In order to better solve this problem, the author proposes to adopt the principle of inversion of the burden of proof. Creditors do not need to prove that shareholders' misconduct caused their own interests to be harmed. But the shareholder of limited liability company need to show evidence to prove that he has not abused the corporate personality, to prove his innocence. This way can fairly deal with the disputes between shareholders of limited liability company and creditors.

5. CONCLUSIONS

To sum up, the corporate legal personality denial system is an important part of the corporate legal system. The legislative improvement of the corporate legal personality system can improve the applicability of the corporate legal personality denial system, and can effectively limit the powers of the company's shareholders, thereby to maintain social and public interests and the legal rights of creditors.

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