



# INSIGHTS

by

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## Lifting the Veil of Incorporation

### **Abuse of the Separate Legal Personality**

**The incorporation of a company creates a separate “person” in law. In turn, a protective “veil” of sorts is cast over the true controllers of the company.**

Consequently, a company's liabilities are its own, not those of its shareholders. If a company cannot pay its debts, it will be liquidated. Indeed, the biggest advantage of incorporating a company is precisely this concept of “limited liability”.

#### Rationale

The concept of the separate legal personality was first laid down nearly a 120 years ago by the House of Lords in *Salomon v Salomon & Co Ltd* [1897] AC 22.

The House of Lord's decision was premised on the fact that a company is a creature of statute and, in law, therefore, the officers of a company and the company are separate persons.

## Safeguard – Court's Intervention

The principle of the separate legal personality, however, is not immune from abuse. As such, in very exceptional circumstances, the Court will ignore the separate legal personality of a company and look to the shareholders / controllers of the company.

This is commonly referred to as “lifting the corporate veil”. Suffice to say, a very high threshold must be crossed before the Court would be willing to lift the corporate veil.

Perhaps, the basis for the Court's intervention in these exceptional circumstances is best summarized by the learned author of Revisiting The Alter Ego Exception In Corporate Veil Piercing [2015] 27 SAcLJ 177;

“The privileges accorded to companies must operate in accordance with the terms upon which they were granted. The doctrine of corporate veil piercing is premised on the basis that such privileges should work hand in glove with responsibility in order to avoid the possibility of abuse or exploitation.”

“When there is a fracture in the proper operating parameters, the court may ascertain the realities of the situation by removing the corporate shield or veil as if the company were not present.”

### When will the Courts Lift the Corporate Veil?

Generally, the situations where a Court may lift the corporate veil fall into two categories; (1) by statute and (2) at common law.

#### a) At Common Law;

i. Company used to evade legal obligations or to commit fraud; the Court will not allow a company to be used as a cloak to disguise a fraud or to allow a person to evade his legal obligations.

ii. Company employed as an agent for its shareholders or controllers; based on general agency principles, i.e. that a principal is liable for the act(s) of its agent (in this case the company being an agent for its shareholders or controllers).

iii. Company is a sham or facade; where a person uses the company as an extension of himself and makes no distinction between the company's business and his own.

iv. Where it is just in the circumstances to do so; This is a residual general discretion retained by the Courts and exercised whenever the justice of a particular case so requires. Simply, the eye of equity will not be blinded by any corporate mask that a person may hold before his face to shield himself (Jones v Lipman [1962] 1 WLR 832)

v. Group of companies; companies within the same corporate group would be treated as separate legal personalities rather than a single economic entity (Goh Chan Peng v Beyonics Technology Ltd [2017] 2 SLR 592)

#### b) By Statute;

i. Where company trades for more than 6 months without a director resident in Singapore – Section 145(10) Companies Act (Cap. 50) (“the Act”)

ii. Failure to indicate company's name on certain instruments – Section 144(2) of the Act

iii. Wrongful trading – Section 339(3) of the Act

iv. Fraudulent trading – Section 340 of the Act

v. Wrongful dividends – Section 403(2)(b)

## Reverse Corporate Veil Piercing

In *Jhaveri Darsan Jitendra and others v Salgaocar Anil Vassudeva and others* [2018] SGHC 24, an individual who claimed to be a beneficial shareholder attempted to argue that the company's assets should be treated as belonging to him personally. Effectively, an attempt at reverse veil piercing.

The Singapore High Court rejected the individual's arguments. The High Court highlighted three forms of corporate veil piercing:-

(1) Standard Piercing – “the company's creditors or contractors who ask the court to pierce the corporate veil, with the aim of holding the shareholders personally liable for their debts.”

(2) Outsider Reverse Piercing – third party trying to hold company liable for shareholder's obligations - “refers to the case where a third party sues against the corporate insider and attempts to pierce the corporate veil to subject corporate assets to its claim.”

(3) Insider Reverse Piercing – a shareholder seeking to lift the corporate veil The High Court clarified that Standard Piercing and Outsider Reverse Piercing are possible under Singapore law but Insider Reverse Piercing is not.

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