

# *Analysis on the new horizontal personality denial system from the perspective of creditor protection*

**Mingjing Zhu**

*China Jiliang University, Hangzhou, Zhejiang, China  
2962493468@qq.com*

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**Abstract:** From the perspective of creditor protection, this paper deeply analyzes the new horizontal personality denial system. It first introduces the concept and background of the new horizontal personality denial system, and then analyzes the necessity and significance of the system from the perspective of creditor protection. Then, the article makes a detailed interpretation of the specific content of the new horizontal personality denial system, including the applicable conditions, legal liability and relief channels. Finally, according to the possible problems in the implementation of the system, the corresponding improvement suggestions and improvement measures are put forward.

## **1. Introduction**

In the market economy, as an important economic subject, the company's behavior and decision have a profound impact on the interests of creditors. However, in practice, some companies damage the legitimate rights and interests of creditors by means of personality confusion and malicious evasion of debts. To solve this problem, a new horizontal personality denial system has emerged to protect the interests of creditors. From the perspective of creditor protection, this paper will deeply analyze the new horizontal personality denial system, discuss the necessity and significance of the system, analyze its specific content, and put forward corresponding suggestions for improvement.

## **2. Theoretical analysis of the horizontal personality denial system**

### **2.1 Horizontal personality denies the necessity of the existence of the system**

In the market economy, as an important economic subject, the company's behavior and decision have a profound impact on the interests of creditors. However, in practice, some companies damage the legitimate rights and interests of creditors by means of personality confusion and malicious evasion of debts. In order to solve this problem, the horizontal personality denial system emerged to protect the interests of creditors. The existence of this system has a significant necessity, mainly reflected in the following aspects<sup>[1]</sup>.

Horizontal personality denial system is the inevitable product of the development of market economy to a certain stage. With the development of market economy, the relationship between companies is becoming increasingly complex. Some dishonest enterprises build a complex

corporate structure through chain of control and false investment, so as to avoid debt, money laundering and other activities. This kind of behavior seriously damages the interests of creditors and the fairness of the market economy. The implementation of the horizontal personality denial system will help to uncover the corporate veil and prevent dishonest enterprises from using the corporate structure to cheat and evade debts, so as to maintain the fairness and stability of the market economy<sup>[2]</sup>.

Horizontal personality denial system is an important part of corporate personality denial system. The traditional vertical personality denial system mainly focuses on the association between the shareholders and the company, while the horizontal personality denial system extends the focus to the independent personality among the affiliated companies. With the diversification of enterprise organizational forms, the problem of independent personality among affiliated companies gradually becomes prominent<sup>[3]</sup>. The existence of the horizontal personality denial system helps to prevent the personality confusion and abuse of control among the affiliated companies, and maintain the principle of fairness and justice in the company law.

Horizontal personality denial system is an important tool to protect the rights and interests of creditors. Creditors are the vulnerable group in the market economy, and their rights and interests are easily infringed upon by dishonest enterprises. The implementation of the horizontal personality denial system enables the creditors to investigate the joint and several liability of the affiliated companies through legal channels, so as to better protect their legitimate rights and interests. The existence of this system helps to improve the market confidence, encourage the creditors to invest, and promote the healthy development of the market economy. To sum up, the existence of the horizontal personality denial system has an important necessity<sup>[4]</sup>.

## **2.2 The abolition view of the horizontal personality denial system**

First, one of the reasons for the abolition of the horizontal personality denial system is that the system may undermine the stability of the company law. The personality denial system in the company law is established to maintain the independent personality between the company and the shareholders, whose purpose is to prevent the shareholders from abusing the company personality and damaging the interests of creditors. However, the horizontal personality denial system extends the focus to the affiliated companies, which may lead to confusion in the corporate law system. If the horizontal personality denial system is abolished, the company law will be clearer and more consistent, which will help to maintain the stability and predictability of the law<sup>[5]</sup>.

Secondly, another reason for the abolition of the horizontal personality denial system is that the system may cause moral hazard. Some critics believe that the horizontal personality denial system may lead creditors to abuse the system and damage the legitimate rights and interests of the company through malicious litigation and other means. If the creditors can easily deny the independent personality of the affiliated companies through the system, and demand joint liability, then it may cause improper business competition and moral hazard. Therefore, the abolition of the horizontal personality denial system can avoid the risk of abuse and protect the legitimate rights and interests of the company.

Finally, the idea of abolishing the horizontal personality denial system is also based on efficiency considerations. Some scholars believe that the implementation cost of horizontal personality denial system is high and requires a lot of judicial resources and time. If the system is abolished, the courts can be more efficient by devoting more resources and time to other, more urgent and important cases. In addition, the abolition of the horizontal personality denial system can also reduce commercial disputes and litigation, reduce commercial costs, and improve market efficiency<sup>[6]</sup>.

To sum up, the view of abolishing the horizontal personality denial system is mainly based on

the consideration of maintaining the stability of the company law, avoiding moral hazard and improving the judicial efficiency. However, these views are not sufficient to deny the value and necessity of a horizontal personality denial system. In fact, the existence of this system is still of great significance to protecting the rights and interests of creditors and maintaining the market order.

### **3. Comparative analysis of the horizontal personality denial system at home and abroad**

#### **3.1 The American "Veiled Metaphor"**

The American "veil metaphor" refers to the First Amendment to the United States Constitution, where the freedom of speech, the press and publication and assembly is compared to be the "veil of freedom", protecting individuals from unreasonable intervention by the government. This metaphor highlights the importance of free speech as a fundamental human right and sees it as a key barrier against government abuse of power.

The "veil metaphor" originated from American judicial precedents in the 19th century. At that time, the US government tried to restrict the freedom of speech and publication in order to maintain social order and public morality. However, the court held that these restrictions violated the fundamental rights guaranteed by the First Amendment. To vividly illustrate the scope of protection of free speech and the limits of government intervention, judges used "veil metaphor"<sup>[7]</sup>.

According to this metaphor, freedom of speech is seen as the "veil" of individual rights, protecting individuals from unreasonable intervention by the government. This "veil" can prevent governments from abusing their power and ensure that citizens are free to express their opinions, criticize the government and supervise public affairs. If the government can arbitrarily violate the freedom of speech, then the basic rights of citizens will be threatened and democracy will be destroyed.

The "veil metaphor" has been widely used in the subsequent judicial practice. Whenever the government attempts to restrict free speech, the court cites this metaphor to explain the meaning and scope of application of the First Amendment. Through the "veil metaphor", "the court emphasized the importance of free speech as the cornerstone of a democratic system and required the government to follow strict legal standards in restricting freedom of expression.

In addition, the "veil metaphor" also affects the public opinion in American society. This metaphor inspires people to value and maintain the freedom of speech, encouraging citizens to actively participate in public affairs, express their opinions and supervise the government. It reminds vigilance to government intervention in freedom of expression and requires that the government should bear the burden of proof in restricting freedom of expression.

In short, "veil metaphor" is one of the important judicial concepts in the First Amendment to the US Constitution, emphasizing the importance of freedom of speech as a fundamental human right and treating it as a key barrier against the abuse of the power of government. This metaphor has inspired people to value and maintain the freedom of speech, and has had a profound impact on the development of the American democratic system.

#### **3.2 The German "Perspective theory"**

German "perspective theory" is a theory in the personality denial system of corporate law. Its core idea is to prevent dishonest people from using the company for fraud, money laundering and other activities by "perspective" the actual control relationship behind the company. The theory holds that although the company has an independent legal personality, the actual controlling relationship behind it may hide the illegal behavior of dishonest people. Therefore, through the

"perspective" of the actual control relationship of the company, the corporate veil can be unveiled to prevent dishonest people from using the company for fraud, money laundering and other activities.

The German "perspective theory" originated from the crackdown on dishonest people who use companies for fraud, money laundering and other activities. In Germany, some dishonest people control the company to carry out fraud, money laundering and other activities, which brings great harm to the society. In order to combat these behaviors, the German government has adopted a series of measures, the most important of which is the introduction of "perspective theory".

According to the "perspective theory", the German government has investigated and regulated the actual control relationship of the company. The government identified the actual controller of the company by investigating the equity chain and control chain of the company, and strictly supervised it. If dishonest people are found to use the company for fraud, money laundering and other activities, the government will take severe measures, including revoking the company registration, fines and so on.

The German "perspective theory" works very well. By investigating and regulating the actual control of the companies, the German government has successfully cracked down on dishonest people using the companies for fraud, money laundering and other activities<sup>[8]</sup>. At the same time, the theory also improves the transparency and market confidence. More and more countries are starting to introduce "perspective theory" to combat dishonest people's fraud and money laundering by companies.

However, the German "perspective theory" also has some challenges and problems. First of all, the investigation and supervision of companies require a lot of human, material and financial resources, which puts forward higher requirements for the regulatory ability of the government. Secondly, the theory may infringe on the company's trade secrets and privacy rights, with a certain impact on the normal operation of the company. Finally, there are certain legal risks and disputes in this theory, which need to be further explored and improved.

To solve these problems, the German government has taken a series of measures. First of all, the government has strengthened the supervision and investigation capacity building of the actual control relationship of the company, and improved the efficiency and accuracy of the supervision. Second, the government has stepped up its crackdown on violations of trade secrets and privacy to protect the legitimate rights and interests of the company. Finally, the government has strengthened the publicity and education of the "perspective theory", and improved the public's understanding and understanding of the theory.

In short, the German "perspective theory" is an effective means to fight against dishonest people by using companies for fraud, money laundering and other activities. Although there are some challenges and problems in the theory, the theory can be further improved and improved by strengthening supervision and building capacity and protecting the legitimate rights and interests of the company.

### **3.3 Theoretical contention after the introduction of the legal personality denial system in Japan**

As for the background of the introduction of the legal personality denial system, Japan's economy developed rapidly after the Second World War, and the scale and influence of the company expanded continuously. However, some dishonest people use the company to conduct fraud, money laundering and other activities, which has brought great harm to the society. To combat these actions, the Japanese government introduced a legal personality denial system to prevent dishonest people from using the corporate veil for illegal activities<sup>[9]</sup>.

There are different views in the Japanese academic circles on the theoretical basis of the legal

personality denial system. One view is that the legal personality denial system is established to prevent the company from abusing its independent personality, and its purpose is to protect creditors and social public interests. Another view is that the legal personality denial system is the supplement and perfection of the corporate personality, and its purpose is to realize the substantive justice between the company and its shareholders. In addition, some scholars believe that the legal personality denial system is established to realize the corporate social responsibility, and its purpose is to promote social equity and sustainable development.

There are also different views on the applicable conditions and standards of the legal personality denial system. Some scholars believe that the personality denial system of applicable law needs to meet strict conditions, such as the abuse of independent personality of companies, the loss of creditors, and the causal relationship. Other scholars believe that the applicable conditions of the legal personality denial system should be relatively flexible to adapt to different situations and needs. In addition, some scholars advocate the combination of the legal personality denial system with the corporate governance structure to improve the transparency and impartiality of the company.

Some studies have shown that the implementation of the legal personality denial system has effectively hit the dishonest people who use companies to conduct fraud, money laundering and other activities, and improved the transparency and fairness of the market. Other studies show that there are some problems in the application of the legal personality denial system, such as the unclear application standards and the subjectivity of judicial judgment. In addition, some studies show that the implementation of the legal personality denial system also has a certain impact on the corporate governance structure and risk management.

There are also different views on the future development of the legal personality denial system. Some scholars advocate continuing to improve and strengthen the legal personality denial system, in order to better fight the dishonest people by using the company for fraud, money laundering and other activities. Others scholars believe that the legal personality denial system should be combined with other regulatory means to achieve better regulatory effects. Some scholars advocate the reform and improvement of the legal personality denial system to meet the needs of future economic development.

To sum up, the theoretical contention after the introduction of the legal personality denial system in Japan mainly focuses on the theoretical basis, applicable conditions and standards, practical effect and influence, and the future development of the system. These theoretical arguments not only enrich the theoretical research of the company law, but also provide a useful reference and reference for the perfection and development of the system.

### **3.4 Challenges after China's horizontal corporate personality denial system becomes a culture**

First, the culture may lead to the rigidity and rigidity of institutions. In the process of institutional culture, some specific regulations and standards are clarified, which contributes to the unified application of the law and the reduction of judicial discretion. However, such regulations and standards may also become rigid and rigid, unable to adapt to complex and changeable actual situations. Due to the changing relationship and behavior between companies, rigid and rigid standards may not fully cover all kinds of situations, which limits the applicable effect of the system.

Culture may lead to moral hazard and legal circumvention. After the system becomes cultural, some dishonest people may try to circumvent the law in more covert ways. They may adopt more complex organizational structures and trading arrangements to mask dishonest behavior. In addition, some companies may abuse the legal procedures through malicious litigation and other ways to

damage the legitimate rights and interests of other companies. These moral hazard and legal circumvention may have a negative impact on the implementation effect of the system.

A culture may increase the cost and difficulty of system implementation. The culture of institutions means clearer regulations and higher legal standards, which require more judicial resources and time to implement and implement. Courts may need more time and energy to hear cases involving horizontal corporate personality denial, which may lead to reduced judicial efficiency. In addition, the culture of the system may also increase the social cost of the system implementation, such as increasing the compliance costs of enterprises and the litigation costs of lawyers.

#### **4. There are still judicial difficulties in the application of the new horizontal personality denial system**

##### **4.1 Burden of proof and standard of proof**

The burden of proof and the standard of proof are the important issues in the system of horizontal legal person personality denial. In cases involving the company's related party transactions, property confusion, excessive control and other claims, the plaintiff needs to bear the burden of proof, that is, to provide evidence to prove that the defendant company has abused its independent personality, and the fact that the behavior has caused the damage to the plaintiff's interests. However, there are some difficulties and disputes in the distribution of the burden of proof and the determination of the standard of proof in practice.

First, as to the distribution of the burden of proof, it is generally believed that the plaintiff should bear the main burden of proof. This is because the defendant company usually has more internal information and control, and it is difficult for the plaintiff to obtain sufficient evidence to prove that the defendant company has abused its independent personality. Therefore, the plaintiff needs to prove the misconduct of the defendant company by providing relevant evidence, such as transaction records, financial reports, resolutions of the shareholders' meeting, etc. However, in some exceptional circumstances, the burden of proof may shift to the defendant company, such as in cases involving trade secrets and privacy protection.

Secondly, as for the determination of the standard of proof, the "high coverage" standard in the civil action is generally adopted. This means that the evidence offered by the plaintiff should be sufficient to give the judge a reasonable doubt about the abuse of the independent personality and to make further investigation based on this basis. In exceptional cases, such as cases involving national security and public interest, the standard of proof may be raised to require more conclusive evidence from the plaintiffs.

To sum up, the burden of proof and the standard of proof are important issues in the system of horizontal corporate personality denial. In practice, it is necessary to judge and adjust according to the specific situation to ensure the fair, just and effective implementation of the system. At the same time, it is necessary to strengthen the construction and improvement of relevant laws and regulations, and clarify the specific provisions of the burden of proof and the standard of proof, so as to improve the operability and applicability of the system.

##### **4.2 Difficulty in identifying the constitutive elements**

The difficulty of identifying the constitutive elements is a major challenge in the implementation of the horizontal legal person personality denial system. The core of this system is to judge whether the company has any abuse of independent personality, and the determination of this behavior often involves complex legal, business and factual issues.

First, the forms of abuse of independent personality are diverse and often hidden. Companies may hide their abuse through a variety of complex organizational structures and transaction arrangements, such as hidden chain of control, complex equity chain, etc. This brings a great difficulty to the identification.

Second, the access to relevant evidence is also a big problem. Due to the information asymmetry within the company, it is difficult for outsiders to obtain the specific operation and decision information within the company. Especially when it comes to trade secrets and privacy protection, access to evidence is even more difficult.

Moreover, the ambiguity and incompleteness of the legal provisions also increase the difficulty of identification. Although China has introduced the legal personality denial system, the specific provisions and standards are still not clear, leading to the subjectivity and arbitrariness of judges in the trial of cases.

In order to solve the problem of difficult identification of constitutive elements, it is necessary to further improve the relevant laws and regulations, and clarify the specific identification standards and operating procedures. At the same time, strengthen supervision and law enforcement, improve the ability to detect and combat the company's misconduct. In addition, public legal awareness should be raised and more people should be encouraged to participate in the supervision of corporate misconduct.

## 5. Conclusion

From the perspective of creditor protection, the new horizontal legal personality denial system has a positive significance in enhancing the protection of creditors' interests. By denying the independent personality of the affiliated companies, malicious collusion and evasion of debts can be prevented, and the legitimate rights and interests of creditors can be protected. At the same time, the new system also stipulates the inversion of the burden of proof, which reduces the burden of proof and improves the success rate of creditor recovery.

However, the new horizontal corporate personality denial system still faces some challenges in its implementation. First of all, the identification standard is not clear enough, which may lead to the existence of subjectivity and arbitrariness in judicial judgment. Secondly, the inversion of the burden of proof may lead to an imbalance of interests and cause an unfair burden on the non-affiliated companies. In addition, the new system may cause moral hazard and legal circumvention, which requires greater supervision and enforcement.

In order to improve the new horizontal legal person personality denial system, it is suggested to further clarify the identification standards and improve the operability and transparency of the system. At the same time, it is necessary to balance the interests between creditors and affiliates to avoid the abuse of the system. In addition, supervision and law enforcement should be strengthened to improve the ability to detect and combat corporate misconduct.

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