

## On the Corporate Personality Denial System

Shaopei Yan

Institute of Law, Shanxi University of Finance and Economics

passion123666@163.com

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**Abstract:** The corporate legal personality denial system is a necessary and useful supplement to the corporate legal person system in my country, and it plays a pivotal role in the corporate legal system. However, at present, we have only made provisions in principle for this system, and there are still difficulties in the application of specific cases. This article aims to analyze the system value and applicable conditions of the company's legal personality system, explore its problems in the process of legislation and judicial practice, and make corresponding suggestions.

### 1. Introduction

With the rapid development of the market economy, the company has become an extremely effective form of organization in the process of socialized production. The establishment of the company's independent personality not only reduces the risks borne by shareholders' investment to a certain extent, but also effectively promotes the economic and social development. However, while the company brings huge benefits, it also makes us face greater challenges. In recent years, the phenomenon of shareholders abusing the independent personality of the company's legal person has occurred from time to time, which violates the original intention of the company's establishment of the principle of independent personality. This article combs the basic content of the company's legal personality denial system, discusses the problems in its application and puts forward suggestions, hoping that this system can better adapt to the development of social reality.

### 2. The basic connotation of the corporate legal personality denial system

The corporate personality of a company refers to the company's subject qualifications to independently enjoy civil rights and assume civil obligations in its own name. The significance of the company's personality system is to recognize the company's independent status. The company has independent property and can independently assume responsibility to the outside world, while shareholders are limited to the limited capital.

The denial of corporate legal personality, also known as uncovering the veil of the company, refers to preventing corporate shareholders from abusing the independent status of corporate legal persons and the limited liability of shareholders to evade debts and seriously damaging the interests of creditors, denying the company's independent personality and the limited liability of shareholders. Creditors can directly request the legal system of shareholders who abuse the company's personality to bear joint liability for the company's debts.

The corporate legal personality denial system is an exception to the corporate personality system. This is not a denial of the entire corporate personality system, but a strict adherence to corporate personality. This is because the legal person denied by the legal personality denial system has actually been controlled by criminals and has temporarily lost the personality independence of the legal person. Under certain conditions, the corporate legal personality denial system is a reasonable and necessary means of protection for the public interest, especially the company's creditor's interests, alleviating the contradiction between the limited liability of shareholders and the loss of creditor's interests, and effectively safeguarding the healthy development of the legal person system. To provide protection for limiting shareholders' abuse of rights.

### **3. The applicable conditions of the company's legal personality system**

The company legally obtains the legal personality. The legal person of a company established according to law enjoys an independent personality, there is a possibility of personality abuse, and it is necessary to apply the denial of company personality.

Shareholders committed illegal acts that used the independent status of the company's legal person and its own limited liability to evade debt. For example, shareholders failed to make capital contributions on time, and evaded capital contributions.

Shareholders who abuse their rights have caused serious damage to the interests of creditors. This is a post-relief method. Only one party's rights are violated. In order to adjust the unreasonable relationship between the two parties, this system has the necessity of application. Through the legal personality denial system, the regulatory role of the company, shareholders and creditors Balance of interests. Only if the shareholders seriously damage the interests of the company's creditors, can the company's legal personality denial system be applied and joint and several liability for the company's debts.

### **4. Problems in the company's legal personality system**

#### **4.1 Problems at the legislative level**

Article 20 of the "Company Law" only provides principled provisions on the company's legal personality denial system, and there are still ambiguities in the application of specific cases. It is unclear how shareholders should assume responsibility after illegally using the company's independent person to seek illegitimate benefits. In the application of specific cases, there are no system requirements for the main elements and behavior methods, which behaviors will become the behavior elements that abuse the rights of shareholders in accordance with the personality of the legal person, and the possible mixed phenomenon of the personality of the company and the shareholders has brought inconvenience to practice.

At the same time, the "Company Law" only stipulates compensation for the damage of the company's creditors' interests, and does not involve protection at the level of public interest. If the actual controlling shareholder cooperates with other shareholders to damage the public interest, how to maintain this issue, this issue needs to be resolved urgently.

#### **4.2 Problems at the judicial level**

In judicial practice, there is no unified standard for the application of the company's personality denial system. Due to the ambiguity of the legal provisions, judges have greater discretion when hearing specific cases. Each judge has its own measurement standards, and each person's understanding of the legal provisions is also different. In this case It is very likely that there will be different judgments in the same case, which violates the concept of fairness and justice.

Article 63 of the "Company Law" only makes special provisions for one-person companies. Shareholders shall bear the burden of proof to prove the company's independent status, otherwise it shall bear joint and several liabilities. But for other types of companies, the law does not make provisions. Therefore, in judicial practice, there is the problem of difficulty for the company's creditors to bear the burden of proof. If the principle of "who claims and who proves" is applied, the creditors as plaintiffs must provide various evidences to prove that shareholders abuse the corporate personality of the company, and the materials to be collected, such as accounting books, are mostly kept secret, and creditors generally have no way of knowing.

### **5. Suggestions for improving the corporate personality system**

#### **5.1 Improve relevant laws and regulations**

Clarify the applicable requirements of the company's legal personality denial system. The law specifically describes the content of the relevant subject requirements, behavior requirements, and result requirements. On the subject side, it is possible to consider including social organizations, etc.

within the scope of the plaintiff on the basis of principled provisions. In terms of behavior, subjective and objective behaviors are divided according to the nature of the behaviors and bear corresponding responsibilities. At the same time, for the damage of public interests, the law should provide corresponding relief channels.

## **5.2 Improve the burden of proof system**

The "who advocates, who provides evidence" model is suitable for the evidence proof regulation of general cases, that is, the parties have the ability to collect evidence. However, in the judicial practice denied by the company's legal personality system, proving that shareholders are abusing their rights is the key to hearing the case, but the plaintiff does have difficulties in obtaining such confidential documents. In this case, the inversion of the burden of proof should apply. The plaintiff first proves that the shareholders have abused their rights to infringe their rights and interests. After reaching the level prescribed by law, the shareholders then prove that they have not abused their rights, otherwise the shareholders will bear the consequences of losing the lawsuit.

## **6. Conclusion**

The establishment of the corporate legal personality denial system has effectively filled the gap in my country's legislative system. While we are pleased with the continuous improvement of the rule of law system, we should also take an objective view of the problems in this system. Combined with actual cases, the company's legal personality denial system was improved from a theoretical and practical level, so that the system can be better applied in my country.

## **References**

- [1] Wang Shouchun. The application of the corporate legal personality denial system in the execution procedure [J]. Academic Exchange, 2016, (12): 98-104.
- [2] Wang Li. On the dilemma of the application of the company's legal personality denial system in my country—Interpretation of Article 20 of the "Company Law" [J]. Journal of Heilongjiang Institute of Political and Legal Management Cadres, 2017, (2): 73-76.
- [3] Yu Zongru, Fu Yongli. Research on the system of corporate legal personality denial in my country [J]. Legal System and Society, 2016, (4): 56-57.