

Study on the Application of the Rules of Corporate Personality Denial

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Abstract: The creation of the corporate system is a great invention, it gives the company with independent personality and shareholders with limited liability, stimulate the enthusiasm of investors, greatly promote the development of social economy. However, with the development of society, the use of legal person independent personality and limited liability of shareholders to avoid debt gradually increased, so the legal person personality denial system came into being, used to protect the legitimate rights and interests of creditors. The implementation of the legal personality denial system is always centred on two principles, namely, the principle of good faith and the principle of prohibiting the abuse of rights, the purpose is to protect the interests of creditors, mainly through the restriction of shareholders to abuse the rights of the shareholders to deny the abuse of the limited liability of the shareholders of the company's independent personality at the same time, but also to balance the interests of the shareholders of the company and the creditors.

Keywords: Corporate personality denial, Principle of honesty and credit, Principle of prohibition of abuse of rights.

1. Introduction

The denial of corporate personality refers to the fact that after a company is legally established, if there is an abuse of corporate personality in a specific event (e.g., between a subsidiary and the parent company or between shareholders and the company), and if the company is still fully recognised as having a formally independent personality in the event, it will violate the principle of fairness and justice or infringe upon the security of the transactions of the third party, the company will temporarily deny the independent personality and limited liability of the shareholders behind the company and its shareholders in the particular event, and order the shareholders to be directly responsible for the creditors or public interests. A legal measure that temporarily denies the independent personality of the company and the shareholders behind it in that particular event and the limited liability of the shareholders, and orders the shareholders to be directly responsible for the creditors of the company or the public interest. Obviously, this principle is an amendment to the independent personality of the company and the limited liability of the shareholders, and its main function is to correct and remedy the abuse of the limited liability of the shareholders and the independent legal personality of the company. Generally speaking, the system originated from the Anglo-American jurisprudence. In the judicial practice of various countries, the system of denial of corporate personality has had an increasingly wide impact. However, in most countries, the system has not yet risen to the level of a system formally recognised by law, but is mainly recognised and applied by way of jurisprudence and jurisprudence. At present, only a few countries, such as the United Kingdom, France, Italy and China, have established the corporate personality denial system through legislation.

The revised Company Law of 2005 clearly stipulates the rule of denial of corporate personality in Article 20, but due to the various forms of shareholders' abuse of the independent status of corporate personality and limited liability in practice, it is impossible to enumerate all of them, so the Company Law has only made principle provisions. In judicial practice, some

Higher People's Courts summed up the trial experience in time, and formed a number of documents with guiding significance, such as the Interpretation on the Application of the Company Law issued by the Zhejiang Higher People's Court, the Opinions on the Trial of Cases of Application of the Company Law Issued by the Jiangsu Higher People's Court (for Trial Use), and the Opinions on the Denial of the Company's Corporate Personality Issued by the Shanghai Higher People's Court, and so on. Opinions on Cases of Denial of Corporate Personality issued by Shanghai Higher People's Court, etc. The Supreme People's Court issued Guidance Case No. 15 on 31 March 2013 to address the issue of identification and legal liability for personality mixing involving affiliated companies, and the Proceedings of the Ninth National Courts Civil and Commercial Trial Work Conference, adopted in 2019, also provided a more detailed discussion of the specific application of corporate personality denial. However, in the trial practice, there are still some disputes on the criteria for determining the abuse of the independent status of corporate personality and limited liability of shareholders by shareholders of a company. Through case analysis and research, combined with trial practice, the author hopes to identify the current situation and problems in the application of the rules of denial of corporate personality, with a view to putting forward valuable suggestions.

2. An Empirical Examination of the Corporate Personality Denial Class of Cases

The author to corporate personality denial rules involved in the company law article 20, paragraph 3, article 63 of the provisions of the judicial practice as the object of investigation, with 200 effective judgements (rulings) as the material, to show the corporate personality denial rules in China's judicial practice in the application of the status quo and the approximate appearance of the rule.

2.1. Types of cases to which the denial of corporate personality applies

In judicial practice, there are no cases of corporate personality denial disputes, and the rules of corporate personality denial are applicable to various cases such as contracts, companies, torts, property rights, labour disputes and bankruptcy and liquidation. Of the 200 cases selected, 130 cases, or 65% of all cases, involved contract disputes, including sale and purchase contract disputes, private lending (financial loan contract) disputes, leasing contract disputes, construction contract disputes, contractual disputes, contractual disputes, service contract disputes, and warranty contract disputes, etc. In addition, after 2013, there was no case of corporate personality denial in judicial practice. In addition, after 2013, there was a significant increase in the number of personality denial cases, which was directly causally related to the Supreme People's Court's issuance of Guiding Case No. 15 confirming the applicability of the personality denial system to affiliated companies.

2.2. Analysis of differences in judgement outcomes for different types of parties

In terms of the type of company, the cases in which the denial of corporate personality has been applied have involved closed companies, and no cases have been found in which the legal personality of a joint-stock company has been denied. This is because investors in public companies generally do not participate in business management, while only investors in closed companies directly participate in business management. In terms of the number of shareholders in a company, the rule of denial of corporate personality has been more widely applied in one-person companies. In addition to the fact that the uniqueness of the shareholders of a one-person company can easily lead to confusion and abuse of corporate personality by the shareholders, it is also because Article 63 of the Company Law also stipulates that the shareholders of a one-person company shall bear the burden of proof as to whether or not their personal property is separate from the company's property, which makes it easier for creditors to claim the denial of corporate personality to be upheld by the court in a one-person company setting.

2.3. General position of judicial decisions

Among the 200 effective decisions, the court applied the rule of denial of corporate personality to make the shareholders or affiliates of the company jointly and severally liable for the company's debts in 117 cases, of which 2 cases involved the reverse lifting of the corporate veil, i.e., the company assumed the responsibility on behalf of the shareholders after the corporate veil was lifted; for various reasons, the court did not lift the corporate veil, and did not support the shareholders or other subjects to assume the joint and several responsibility in 82 cases, including one case involving the issue of jurisdiction in the application of the rule of denial of corporate personality. 82 cases, of which one case involved the issue of jurisdiction in the application of the rules on denial of corporate personality. In 83.3 per cent of the cases involving one-person limited liability companies, the final judgement was to hold the one-person shareholders jointly and severally liable. In cases where creditors sued to hold shareholders jointly and severally liable for the company's debts in accordance with the provisions of article 20, paragraph 3, of the company law, the courts supported 57.6

per cent of the claims.

3. Elements of the Corporate Personality Denial Rule

In practice, the abuse of corporate legal personality by shareholders of a company is diverse, and some of them are very hidden. Therefore, the courts of various countries judge a specific case according to the legal concepts of fairness and justice and rely on the general provisions of honesty and good faith, good customs and the prohibition of abuse of rights to realise the value objectives of fairness and justice in individual cases, so as to make the legal theory of denial of corporate legal personality not only be widely used in actual operation, but also manifests itself as a living soul. It can determine the general constituent elements of the corporate personality denial rule, for the understanding of the rule and the trial authority in the judicial practice of the accurate application of the rule is of great significance. According to the provisions of Article 2.3 of the Company Law, the constituent elements of the corporate personality denial rule mainly include the main elements, behavioural elements and results.

3.1. Subjectivity

3.1.1. Competence of the subject of the claim

According to the provisions of article 20 of the company law, the main body of the company's claim for denial of legal personality for the company's creditors. Company creditors include both voluntary creditors, such as contract debt creditors; also includes involuntary creditors, such as tort debt creditors, causeless management and unjustified benefit debt creditors; also includes public welfare creditors, such as the company's tax claims arising from tax evasion, due to environmental pollution arising from the corresponding public welfare claims, the relevant departments of the law as the main body of the plaintiff is eligible to file a company legal personality denial. The law provides that the relevant departments are qualified as the subject of the plaintiff to file a corporate personality denial lawsuit.

3.1.2. Suitability of the subject of responsibility

According to the provisions of Article 20 of the Company Law, the main body of the company's legal personality denial responsibility for the company's shareholders, but in fact not every shareholder has the possibility of abusing the independent personality of the company's legal personality. Generally speaking, in the process of the company's operation, participate in the company's operation and management, have the right to manage the shareholders, that is, the positive shareholders may take advantage of its advantageous position to abuse the rights, and do not have the right to manage the shareholders who do not participate in the operation of the company, that is, the negative shareholders, can not take advantage of the company to harm the interests of the creditors, therefore, the lifting of the veil of the company is generally only for the positive shareholders, not for the negative shareholders. On the question of whether the actual controller and officers (directors, supervisors and executives) of a company can be the subject of liability for denial of corporate personality.

For actual controllers, the rules of corporate legal personality denial can be applied, this is because the position of the actual controllers in the company is similar to the shareholders of the company. We can apply the manifestation

system and analogise them to manifestation shareholders. Articles 18, 20 and 21 of the Supreme People's Court's Provisions on Certain Issues on the Application of the Company Law of the People's Republic of China (II) (hereinafter referred to as Interpretation II of the Company Law) stipulate the liability to the company's creditors in the event that the actual controller of the company is negligent in fulfilling the obligation of liquidation or unlawful in the event of liquidation, and for the compliance with the behavioural requirements of the denial of the corporate personality of the company, the judicial practice also recognises the actual controller as the subject of liability for the denial of the corporate personality. Liability subject of corporate personality denial.

As to whether the officers (directors, supervisors, executives) can be the subject of liability, the author believes that it is not possible. Because the denial of corporate personality is mainly to amend the limited liability of the company, the purpose is to penetrate the company to pursue the responsibility of shareholders. Officers are not shareholders, so this system can not be applied. In addition, the accountability of officers has a separate legal provisions, the officers of the credit obligations, in our legislation as a duty of loyalty, diligence, are the legal basis for its responsibility.

3.2. Elements of behaviour

A shareholder of a company commits an act of abuse of the independent status of the company's legal personality and the limited liability of the shareholders, which is the behavioural element for the application of the rule of denial of the company's legal personality. As for the specific types of the abuse, the mainstream opinion of scholars in China summarises them as significant undercapitalisation of the company, conflation of personalities, abuse of control, and wrecking of the company.

Judicial field also holds a similar view, such as Shanghai Municipal Higher People's Court Civil Trial Division issued on 25 June 2009 on the trial of the denial of corporate personality of the case of a number of opinions: "the company there is a significant lack of capital, or shareholders and the company's personality is highly mixed, or shareholders of the company to carry out improper domination and control of the situation, can be deemed to be the third paragraph of Article 20 of the Company Law, the shareholders of the abuse of the independent status of the company's legal person and the limited liability of shareholders." In judicial practice, the determination of behavioural elements is the focus of controversy in such cases, and is also the content that the people's court needs to focus on when applying the principle of denial of corporate legal personality.

The subjective intention of the perpetrator can also be explored through the judgement of the objective abusive behaviour of the shareholders. Due to the difficulty of proof, if the plaintiff proves that the shareholder's abuse of corporate personality has subjective malicious intent, it will be difficult to apply the corporate personality denial rule in practice. Therefore, as long as the shareholders have committed the abuse of the independent status of the company's legal person and the limited liability of the shareholders, it can be presumed that the shareholders have abused the company's legal personality of the subjective malicious intent, the burden of proof of subjective fault should be borne by the shareholders. Of course, even if the creditor proves that the

shareholders have abused the independent status of the company legal person and the limited liability of shareholders, if there is no subjective malicious intent to evade the debt, the denial of corporate personality system is not applicable to the company to lift the corporate veil. For example, in a judgement issued by the Higher People's Court of the Ningxia Hui Autonomous Region, the court held that although the shareholders had excessive control over the company, they actively negotiated and resolved the debt with the company's creditors, and that the shareholders did not have subjective malice in evading the debt, so the denial of the company's legal personality was not supported.

3.3. Outcome elements

The outcome element of the corporate personality denial system is that the shareholders of the company have abused the independent status of the company and the limited liability of the shareholders to objectively evade debts and have seriously harmed the interests of the company's creditors. For this element, three points should be grasped.

First, the abuse of corporate personality must cause damage to the company's creditors. If the shareholders, although the abuse of the independent status of the company's legal person and the limited liability of shareholders, but objectively does not affect the normal realisation of the creditors' claims, the court can not apply the principle of denial of the company's legal personality.

Secondly, there is a direct causal relationship between the act of abusing the corporate personality of the company and the damage caused. If there is no causal relationship, there is no room for the application of the corporate personality denial system. However, with the general tort elements need to be proved by the plaintiff to prove the causal relationship, in view of the shareholders abuse of rights of course damage to the company's solvency, in the case of corporate personality denial of the case, should be applied to the presumption of causality, in the creditor to prove that the shareholders have abused the independent status of the company's legal person and the limited liability of the shareholders of the act, the shareholders should prove that there is no causality, or else shall bear the consequences of Otherwise, they should bear the consequences of failing to prove.

Finally, such damage cannot be compensated by the company itself. In other words, if the company fails to settle its debts as they fall due, but has the possibility of doing so, which indicates that the consequences of the damage are not serious, the principle of denial of corporate legal personality shall not be applied.

4. The Behavioural Elements of The Corporate Personality Denial Rule

The system of denial of personality of legal persons is mainly reflected in a series of jurisprudence in the common law of the United States and England. In its legal system, this field of law is the most messy and difficult to grasp, and some standards even overlap and conflict with each other. The author draws on the applicable standards of foreign companies to lift the corporate veil, based on China's judicial practice, that the court can refer to the application of the following standards in judicial decisions, in individual cases on whether to apply the corporate personality denial rules to be judged comprehensively.

4.1. Significantly undercapitalised companies

The company's capital is the prerequisite for the establishment of the company, and is also an important guarantee for the normal operation of the company and external responsibility. Insufficient capital has the legal insufficiency and economic insufficiency.

Legal insufficiency refers to the shareholders' failure to pay the capital in full on time or withdrawing the capital after the establishment of the company, resulting in the company's capital is lower than the legal minimum capital limit of the company. The corresponding legal rules are mainly for the shareholders absconded, inaccurate capital contribution, false capital contribution and other shareholders violate the obligation of capital contribution, the form of responsibility reflected in the shareholders to make up for the capital contribution, within the scope of the uncontributed part of the company's debts can not be paid to the company's creditors to bear supplementary liability. Economic insufficiency, mainly in terms of lack of solvency, means that the amount of capital is insufficient to cover the risk of loss in view of the nature of the industry in which the company is engaged and the nature of the industry as being prone to risky events. Significant insufficiency of the company's capital in applying the rules of denial of the company's legal personality mainly refers to the economic insufficiency, which is to prevent the shareholders from consciously investing capital that is not in line with the company's business risks, abusing the independent status of the company's legal personality and limited liability, and evading to bear personal liability to the detriment of the interests of creditors.

In judicial practice, the court also recognised that the corporate personality denial system could not be applied to deny the corporate personality of the company solely because of the shareholders' inaccurate capital contribution and evasion of capital contribution, so that the shareholders would be jointly and severally liable for the company's debts. For example, in the judgement handed down by the Shaanxi Provincial Higher People's Court, the court held that the significant insufficiency of the company's capital when applying the rule of denial of legal personality does not refer to the situation when the company's capital falls short of the statutory standard when comparing it with the requirement of the company law for the minimum amount of the company's capital. It refers to the company's capital and the nature of the company's business and the risk of the necessary amount of capital required by the inevitable result of the necessary amount of capital is too low, so can not be applied only because of the shareholders of inaccurate and evasion of the capital and the denial of the company's legal personality to deny the legal personality of the company's denial system.

But in judicial practice, the capital is significantly insufficient to judge the standard, is the case of the legal application of the difficulty. Because: first of all, the capital is significantly insufficient subjective judgement, there is no certain indicator as a reference; Secondly, the current company law does not have the minimum capital requirements, based on insufficient capital alone to shake the cornerstone of the company law - limited liability, also seems to be too hasty. From the viewpoint of foreign practice, in the United States, even in California, which holds a lenient attitude towards corporate personality and had allowed the unveiling of the corporate veil solely on the basis of a significant lack of capital, it is necessary to take into account a lot of factors other than a significant lack of capital in the

unveiling of the corporate veil.

In China's trial practice, the more typical approach is to use insufficient capital together with other factors as the basis for denying the corporate personality of a company, and not to deny the corporate personality of a company solely on the basis of insufficient capital. In practice, the company's creditors are difficult to put forward sufficiently certain evidence to prove that the shareholder's capital is insufficient, so the supreme people's court "on the application of the company law of the people's republic of china" a number of issues of the provisions of the (iii) article 20 provides: "the dispute between the parties as to whether or not they have fulfilled the obligation of capital contribution, the plaintiff to provide the shareholders to fulfil the obligation of the capital contribution of the evidence that creates a reasonable doubt. The defendant shareholder shall bear the burden of proof that it has fulfilled its capital contribution obligation."

4.2. Use of corporate personality by shareholders to avoid contractual and legal obligations

Abuse of corporate personality to avoid contractual obligations is mainly manifested:

The parties who have contractual obligations of specific omissions such as non-competition and so on set up new companies in order to avoid such obligations, or use the old company to cover up their real behaviours; the dominant shareholders of a company which has a huge debt on transactions set up a new company with the same business purpose with the original business premises, board of directors and company staff after the company is dissolved or declared bankrupt through the pumping out of funds or the declaration of bankruptcy of the company in order to escape from the huge debt of the original company; shareholders illegally conceal and transfer company property in the case of a company in debt. The improper purpose of the company's huge debts; the use of the company to defraud creditors in order to evade contractual obligations; shareholders illegally conceal and transfer company property, transferring and registering the company's real estate to their own names in the event of company liabilities, so that the company loses its enforceable property, or attributing to shareholders the sums of money that should belong to the company, which are not entered in the company's books of accounts, which together violate the company's property rights. In practice, if the plaintiff has reasonable doubts about the transfer of company property by the shareholders to prove, the defendant shareholders shall bear the burden of proof on its justification.

Abuse of corporate personality to avoid legal obligations is mainly manifested in the following behaviours.

The controlling shareholders make use of the legal personality of the newly established company or the pre-existing company to artificially change the prerequisites for the application of the mandatory legal norms to achieve the real purpose of circumventing the legal obligations, thus defeating the purpose and effectiveness of the legal norms. For example, in order to prevent large amounts of compensation that may result from wrongful acts in the company's business, the property of the enterprise, which is supposed to be integrated, is dispersed and established in a number of companies, so that each company's assets meet only the legal minimum standard and are insured only up to the minimum limit, thus making it difficult to compensate the victim for his or her losses; or the corporate form is used to

evade tax liabilities, social insurance liabilities or other legal obligations. Another example is the denial of legal personality in the case of a breach of liquidation obligations by the liquidator.

4.3. Confusion between shareholders and corporate personality

Personality mixing is generally considered to be the mixing of shareholders with the company or sister companies, such as asset parts, joint, personnel cross, business mixing, and even the place of registration, place of business, bank account, telephone number and so on are exactly the same, so that outsiders are completely unable to distinguish whether they are dealing with the shareholders or with the company. Personality mixing as the basis for denying the company's legal personality, its jurisprudence is based on the personality mixing against the company as an independent subject of legal expectations, resulting in the loss of the company's independence, and therefore should be denied the company's independent personality, the shareholders jointly and severally liable for the company's debts. Personality mixing is the largest number of corporate personality denial cases, trial practice shows that personality mixing is an important criterion for the application of corporate personality denial.

Personality mixing specifically includes what circumstances? Academic as well as practical understanding of this is basically the same. Comprehensive views, the specific forms of legal personality can be summarised as follows:

First, the property mixing. It refers to the shareholders and the company's property belongs to the unknown, it is difficult to distinguish between their respective property. Mixed property in the first place, because the limited liability is the cornerstone of the company system, it requires the company with all its property to the company's debt liability, the company's independent property is the company's independent responsibility for the material guarantee, the company's independent personality is highlighted in the independence of the property. If the company due to the shareholders' behaviour can not guarantee the independence of property, which affects the company's external liability for the material basis of the debt, so that the company can not pay the due debt, the company's independent personality is virtually null and void. Property mixing is the essence of personality mixing, in all cases of denial of corporate personality due to personality mixing, all involve property mixing. If the plaintiff submits other aspects of conflation, but fails to prove the existence of property conflation, it may not be upheld by the court. Conversely, even if only the existence of property commingling is proved, but not other aspects of commingling, it may be supported by the court.

Second, personnel commingling. It refers to the existence of serious crossover and overlap in organisational structure and personnel between associated companies, such as directors serving concurrently with each other, senior management of the company serving crossly, and even employees being the same, the most typical situation being a set of people and multiple boards of directors. Personnel mixed mainly involves shareholders for the company or related companies, generally does not apply to natural person shareholders. Affiliated companies in the determination of the case constitutes a mixture of personality, almost all involved in the mixing of personnel.

Third, business mixing. It refers to the associated

companies engaged in the same business activities, in the process of operation of each other. As a business is sometimes carried out in the name of the company, and sometimes in the name of another company, so that the other party to the transaction with the other party can not distinguish which company they are trading activities.

Fourth, the office mixed. Often mentioned with the same personnel at the same time, similar to the same personnel, but also applies only to the subject of the company rather than the subject of natural persons.

Fifth, the management of the same. Mainly embodied in the company's management and decision-making power in the hands of individual shareholders or parent company, the company does not have the meaning of independent trading activities.

Judicial practice, the above elements are to be considered in a comprehensive manner, of which the property is the core elements of the investigation. The continuity and extensiveness of the above mixed situations also need to be considered, such as the company reorganisation after the establishment of the original company has not been cancelled, the original company and the reorganisation of the company's business premises, personnel, assets, constituting a mix of personality.

Judicial practice, there are views that, for the judgement of personality mixing, the five elements must be complete, one or more of the elements do not meet, is not sufficient evidence. The author believes that not constitute one of the mixing to be applied to the denial of personality, the court shall conduct the necessary review, and combined with the results of the investigation and evidence collection, comprehensive judgement of whether the company has lost its independence as a legal person.

4.4. The Expanded Application of the Corporate Personality Denial System in Affiliated Companies--An Appraisal of Supreme People's Court Guiding Case No. 15

According to the provisions of Article 20 of the Company Law, the main body of liability for denial of corporate personality is the shareholders of the company. In judicial practice, the court will have the status of shareholders as a prerequisite for the application of the rules of denial of corporate personality. Whether the affiliated company can be the subject of liability for denial of corporate personality is controversial in judicial practice at the beginning.

In 2013, the Supreme People's Court Guidance Case No. 15, XCMG Group Construction Machinery Co. v. Chengdu Chuanjiao Industry and Trade Co., Ltd. and other disputes over sale and purchase contracts, determined that the associated company's personality is mixed, which seriously harms the interests of the creditors and violates the principle of honesty and good faith, and the associated company shall bear the joint and several responsibility for the external debt, and determined that the denial of the corporate personality of the associated company applies to the occasion.

With the development of social and economic life, the company's legal personality and limited liability is abused by the new techniques, which also promote the theory and practice of legal personality denial system continues to develop. From a global perspective, the legal personality denial system has long broken through the traditional

shareholders abuse of the scope of application, showing a continuous expansion of the application of the situation, mainly including the reverse application of legal personality denial and the denial of legal personality between affiliated companies.

Although China's company law as early as 2005 on the introduction of legal personality denial system, but its scope of application is too narrow, the legal personality of the reverse application of denial of legal personality and the denial of legal personality between related companies are not involved, resulting in practice, in the debtor company and other related companies in the occurrence of serious mixing and serious damage to the interests of the creditor, creditors try to let related enterprises apply the principle of denial of legal personality has been Lack of clear legal basis. Supreme Court Guiding Case No. 15 is not limited to the provisions of Article 20 of the Company Law, and expands the scope of application of the corporate personality denial system from vertical denial to horizontal denial, which undoubtedly conforms to the development trend of the corporate personality denial system, and protects the interests of the creditors more flexibly and achieves the balance of interests.

The third paragraph of article 20 of the company law stipulates: "The shareholders of the company shall be jointly and severally liable for the debts of the company if they abuse the independent status of the company and the limited liability of the shareholders, evade debts and seriously harm the interests of the creditors of the company." The normative object of the law is the relationship between the company shareholders and the company, the normative effect is the company shareholders of the company liable for the debts of the company that vertical denial rule. And the court found that the legal status of each other independent of the investment and the investee relationship between the company's personality mixed, mutual joint and several liability (can be called independent status horizontal denial) is unable to apply the law to deal with.

In judicial practice, many related company personality denial case, the court directly apply the company law, article 20, paragraph 3 as the legal basis, the author believes that this is not appropriate. The principles of fairness and good faith in Articles 6 and 7 of the General Principles of the Civil Law and Paragraph 1 of Article 3 of the Company Law are sufficient as legal basis for the court to recognise the mixed personality and deny the independent status of the company.

5. The question of the burden of proof for the denial of the personality of legal persons

5.1. Allocation of the burden of proof for denial of corporate personality in one-person companies

According to article 63 of the Company Law, shareholders of a one-person limited liability company who cannot prove that the company's property is independent of the shareholders' own property shall be jointly and severally liable for the company's debts. In other words, when the creditor of the company proposes to apply the system of denial of legal personality and then deny the independent status of the company, the burden of proof of the creditor of the one-person limited liability company shall be different from that of the shareholders of other limited liability

companies, i.e., in denying the independent legal personality of the one-person limited liability company, it shall be applied to the rule of reversal of the burden of proof, and the shareholders of the one-person limited liability company shall bear the burden of proof for the independence of their property from the company's property. The shareholders of a one-person limited liability company shall bear the burden of proof that their property is independent of the company's property. This is because the possibility of mixing the property of one-person limited liability company is very large, so in order to avoid the shareholders and the company's property mixing as well as in the name of the company to avoid personal debt, the one-person limited liability company has made special provisions, this reversal of the burden of proof embodies the substance of fairness.

5.2. Allocation of the burden of proof for denial of legal personality of an ordinary limited company

If a creditor of an ordinary limited company claims the application of the legal personality denial system, the principle of "whoever claims, whoever proves" should be followed. Compared to the aforementioned Article 63 of the Company Law on one-person limited companies, for ordinary limited companies, the court assigns the burden of proof mainly to the plaintiff creditor in cases where the creditor sues the shareholder for liability. However, in practice, creditors as plaintiffs cannot obtain more clear evidence, which makes it difficult for them to use the denial of corporate personality as a reason to propose that the shareholders and the company be jointly and severally liable, which brings difficulties to judicial practice. Therefore, the judicial authorities in the "who claims, who proves" principle, but also take into account the creditor information asymmetry of the actual situation. In the appeal case of Liability Dispute of Shareholders of Sanya Jiachen Real Estate Development Co., Ltd. and Haima Automobile Group Co., Ltd. for Damaging the Interests of Creditors of the Company, the Supreme People's Court emphasised that, "when hearing cases of denial of corporate personality, taking into account the fact that creditors are at an information disadvantage and have difficulty in proving their case, the People's Court will usually reasonably allocate the burden of proof according to the above provisions, and the burden of proof in the case of creditor The People's Court usually allocates the burden of proof reasonably in accordance with the above provisions, and assigns the burden of proof that there is no abuse to the shareholder being sued if the evidence used by the creditor to prove that the shareholder has abused the independent status of the company and the limited liability of the shareholders is reasonably suspicious. However, the premise of the above adjustment of the burden of proof shall be that the creditor, as the plaintiff party, has adduced conclusive evidence to prove the existence of the shareholder's behaviour of abusing the independent status of corporate personality and limited liability of shareholders as well as the result of the resulting damages, rather than the reversal of the burden of proof as a matter of course." In other words, the possibility of shifting the burden of proof to be allocated to the company and the shareholders arises only when the creditor's proof is sufficient to create a reasonable doubt.

6. Conclusions

Corporate personality denial system is the denial system of limited liability of shareholders, so that the use of the company's independent personality and limited liability of the company's shareholders face the company's creditors, unlimited joint and several liability for the company's debts, so as to avoid the shareholders breach of contractual obligations, legal obligations, etc. to the company's creditors or the public interest of the losses caused by the protection of creditor's interests to form a strong support. Of course, in the application of legal personality denial system to protect the interests of creditors at the same time, but also to prevent the protection of the interests of creditors and shareholders of the company's rights and interests of the infringement of the legal scope of the application of legal personality denial system in order to achieve an organic balance between the both of them.

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