

An Analysis of the Corporate Personality Denial System under the Vision of the Company Law—Comment on Article 23 of “Company Law of the People's Republic of China”

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Abstract: A new amendment of the personality denial rules has been made in the new Company Law. According to the content and trajectory of the new law, the purpose of the new Company Law may be to expand the application scope of one-person company; and to apply the special "personality denial system" of one-person company to all forms of one-person company. The purpose of this revision reflects the limitations in the scope of application of the personality denial system of the original Company Law. In the face of the changing economic market, it cannot effectively protect the rights and interests of creditors. And the new "Company Law" optimizes and integrates the system of piercing the corporate veil, also reflecting the significant demand for the application of this system in judicial practice. This paper will analyze the development direction of the current legal personality system through the overview of the legal personality denial system and comparing the differences between the old and new legal personality denial system.

1. The Question Is Raised

After deliberation and vote at the seventh plenary meeting of the Standing Committee of the 14th National People's Congress, Article 23 of the new version of the Company Law of the People's Republic of China clearly stipulates that if the controlling party controls two or more institutions at the same time to implement the above provisions, these companies that it knows must assume responsibility for any company. For units with only one owner, if the owners are unable to provide evidence that their assets are completely separate from the company and free from interference, their financial situation should be considered relevant and the resulting financial burden and legal risks need to be jointly addressed. The increase of the above two provisions has triggered a heated discussion in the practical and theoretical circles. In fact, this revision is to remove the original chapter 3 of the Company Law specifically for a single shareholder limited company, and the individual enterprise problems are included in the relevant main categories. What is the purpose of

this revision, the seemingly simple structural amendment? Based on this view, the author thinks that should first deny the personality theory to make correct arrangement, and then explore the application in Chinese legal and procedural law, and understanding of one company special "personality negative rules" and the difference between the ordinary form, to clear the personality denial under the company law should how to develop.

2. Overview of the Corporate Personality Denial System

2.1 The Theory of Legal Personality Denial System in the Anglo-American Law System

In the British and American law system, the legal basis of the legal personality denial system is usually understood from its functional perspective, namely, "another self-theory", "tool theory" and "agent theory" respectively. The tool theory is the most common interpretation principle in the British and American law system.

Instrumentalists believe that when shareholders use the company as a means to pursue maximum profits and overly abuse their power and position to manipulate the company, they can ask shareholders to be responsible for the company's debts [1].

According to the view of the second self, if the rights and management decisions between the mother and child enterprises are completely unified, then they constitute a self-related relationship. In order to uphold the principles of justice and equality and promote the healthy development of social economy, we must immediately deprive enterprises of their independent identity, so as not to over expand their responsibilities or avoid their responsibilities by illegal means.

According to the agent, the relationship between the shareholders and the company can be understood as a delegation-delegation situation where the company represents the will of the shareholders to carry out their decisions and actions. The problem with this theory, however, is that it fails to explicitly determine the magnitude of the scope of liability. If the unlimited responsibility system is adopted, shareholders will face heavy burden and high risk, which may cause them unwilling to invest capital, thus affect the liquidity of the market; the use of binding responsibility is not enough to reveal the core value of the personality denial system, and over-reliance on this mechanism may also pose a threat to the foundation of the legal entity.

2.2 In the Civil Law System, the Theory of Legal Entity Denial

In the civil law system, many countries have different understandings of the legal person identity denial system. Through mutual learning and sharpening, they have formed their own unique views, among which Germany and Japan are the most representative.

The study of the legal personality negation system in Japan involves many fields, especially in the application category. Most scholars tend to adopt the "medium doctrine" position, which covers relatively limited content and has a rigorous implementation process. The discussion focuses on two directions: the abuse of principles; the other is the use guidelines based on laws and regulations. The former includes both subjective and objective forms, in which the subjective view requires both the shareholders' subjective malice and relevant actions; the latter means that as long as the shareholders use the company's independence and limited liability to avoid responsibility, even if there is no subjective malice, the actual action can constitute abuse. As for the application of the negative principle of corporate personality, in fact, it is more inclined to the objective abuse way. The last one is to determine whether the enterprise is qualified to enjoy the independent identity of the legal person according to the provisions of the regulations, that is, to see whether it performs and actively undertakes the relevant legal responsibilities.

2.3 The Theoretical Basis of the Legal Person Identity Denial System in China

Since China is a continental law country, most of them follow the theories of Japan and German countries in the corporate personality denial system. The legal concept of China's mainland law system mainly is to follow the principle of honesty and credit and the principle of preventing the abuse of rights, and to restrain the behavior of civil subjects through law and morality, so that the company operates within the legal framework, rather than the one-sided pursuit of legal justice like the British and American law system.

3. Legal Person Personality Denial System in Our Substantive Law and Procedural Law

3.1 The Legislative Status Quo of the Substantive Law of the Corporate Personality Denial System

Before the negation of legal personality was clearly incorporated in the legal provisions, the phenomenon of excessive use of legal personality was widespread, which had a negative impact on the healthy growth of major enterprises in China and disturbed the balanced and stable pattern of economic development of the society. When the previous Company Law has not yet been issued, judicial organs usually judge the abuse of legal independence according to the basic civil principles, such as the principle of good faith and trustworthiness, fairness and peace and so on. However, our country does not follow the case law, so these existing decisions cannot be directly applied to our national conditions. Moreover, the scope of application of the basic principles of civil law is too broad, which cannot reflect the pertinacity and specificity of judicial governance, and even makes the general principles of civil law become a "pocket crime" in civil and commerce, which is not in line with the judicial spirit of China [2]. Therefore, according to article 23 of the current Company Law, "If a shareholder uses two or more companies under his control to carry out the acts prescribed in the preceding paragraph, each company shall bear joint and several liability for Zhao Wu of any company. If a company has only one shareholder and the shareholder cannot prove that the property of the company is independent of the shareholder's own property, he shall be jointly and severally liable for the debts of the company. Article 63 of the regulations clearly states: "Where a single owner is unable to provide evidence of a clear and effective separation between his financial situation and his personal assets, this means that the person must accept full obligations and responsibility for any financial obligations or risks of the business to which he belongs, and accept the relevant penalties." This means that he must pay a price and may face some additional penalties and other consequences. [3]

3.2 The Current Legislative Situation of the Legal Person Personality Denial System and the Procedural Law

Although China has introduced the rule of corporate personality negation in the new version of the Company Law, there is a lack of corresponding laws and regulations to guide the operation in the practical application process. As a key mechanism aimed at safeguarding the legitimate rights and interests of the debtor, the concept of "corporate personality negation" has been widely used in the data statistics of the China adjudication document website. According to the data analysis from 2020 to 2023, more than 3,169 related judgments were recorded, indicating that the regulation has been frequently used in practice. Therefore, some scholars believe that it is necessary to conduct a detailed and complete regulation of it. In addition, they also understand that the system can only be implemented through the court trial process. Because if the debtors cannot meet the needs of their own loss compensation in the mediation or negotiation stage, then they can use the litigation

channel to seek remedies to protect their legal rights [4]. However, at present, there are still some ambiguity about the specific application conditions of the legal personality negation rule, which affect the accuracy and effectiveness of the application in specific situations. Therefore, it is urgent to provide clear legal guidance for the implementation process with the Procedure Law.

3.3 The Applicable Rules of the Legal Person Identity Denial System in China

In the application field and use conditions in the legal personality negation system of the new Company Law, China has only made general norms, but only built a large structure for such problems, without elaborating on its details.

The first principle is to avoid its overuse. This means that we need to control shareholders by limiting their actions in case they deliberately mislead creditors and try to get rid of their statutory liabilities after exploiting the independence of the company as a corporation and the limited liability of shareholders. We can see it by comparing the rule in the US and the UK. Both the United States and the United Kingdom regard evading legal duties, contractual responsibilities and fraudulent claims as key actions to raise questions about corporate identity. In China, "evading debt seriously damages the interests of company creditors" is a general description [5].

Along with the increase of commercial activities, the communication between enterprises increasingly close, and the company's legal person system is also some bad people malicious use, its application category is expanding, in order to prevent them with legal independence and shareholders' liability restrictions to avoid legal obligations, lead to social operation balance, violates the principle of fairness. The basic principle of protecting the legal person system of the company is: if the behavior of shareholders excessively infringes the legal person system, then the law should give corresponding penalties and norms, so as to ensure the survival of the legal person and promote its growth, and achieve the legal goal of fairness and justice.

3.4 China's Current Legislation in the Legal Person Personality Denial System of the Deficiencies

According to the analysis of the legal person personality denial system from the perspective of substantive law and procedural law, it can be seen that the content of the system are unclear; the boundary of judicial application is blurred; and the object of legal consequences is not extended in joint and several liability. In the procedural law, it shows that there are no specific provisions in the judicial procedure of the legal personality denial system in China, the specific application situation is vague, and the distribution of proof responsibility is not clear.

4. The Advantages and Disadvantages of Article 23 of the New Company Law

4.1 The Advantages of the New Law in the Legal Personality Denial System

4.1.1 Specific Provisions Have Been Made On the Circumstances Triggering the Denial of Legal Personality

According to article 23, Item 2 of the new Companies Act, if a shareholder carries out such provisions through multiple enterprises under his control, these enterprises must be liable and jointly liable for the liabilities of any enterprise. "It can be seen that the new law in this revision will specifically include the principle of horizontal personality denial in the law norms, and clarify the specific application situation, that is," more than two ".

4.1.2 The Use of Corporate Personality Denial Points to the Distribution of the Burden of Proof

Article 23, Item 3 of the new Company Law clearly stipulates that if a company has only one shareholder and cannot confirm the separation between its assets and personal assets, then the shareholder must be jointly and severally liable for the debts of the company. This further strengthens and optimizes the personality negation legal system of one-person limited company, and introduces the new principle of evidence liability transfer, applicable to all single shareholder enterprises.

4.1.3 Integrate the Corporate Personality Denial Norms in Commercial Behavior

In the perfection of the new "company law", on the overall structure of the old law deleted the "one person limited liability company special rules" section, will one company may be because of the commercial behavior of infringement or default into each specific system of plate, such as legal personality denies the system setting reflects this point. This integration behavior expands the scope of the one-person company being regulated by the company law, and brings all the various forms of the one-person company into the network of the legal person personality denial system. This also corresponds to the commercial field in recent years trigger the subject of most of the practice, effectively solve the applicable difficult, proof, relief problems, the integration will greatly reduce the processing of legal personality denial system of judicial costs, improve the rights of creditors.

4.2 The Deficiency of the New Law in the Denial System of Legal Person Personality

4.2.1 View the Corporate Personality Denial System from the Perspective of Public Interest Litigation

Either a joint stock limited company or a limited liability company has a certain human compatibility, even if the compatibility of a joint stock limited company is far greater than the human compatibility, the number of shareholders and society involved in the limited company are wider and deeper. So if the abuse of company owners affects public welfare and social well-being, can we initiate public litigation? How to determine the specific circumstances of the public interest damage? What is the standard of loss compensation? At present, there is still no clear answer, and relevant legal provisions and judicial interpretation are urgently needed to guide the court's decision.

4.2.2 Review the Corporate Identity Denial System from the Perspective of the Mediation and Settlement System

According to the provisions of the Civil Procedure Law, in general, before the trial begins, the parties must first try to negotiate by themselves or by the court to conduct reasonable mediation in a fair, transparent and sincere way, and strive to deal with the differences and disputes in a conflict-free way. So, when it comes to the corporate personality is questioned, can the court provide a suitable mediation path to the injured party? The author believes that the role of adjustment and reconciliation in such cases should be appropriately considered. The principle of tort damage in China is the principle of filling, that is, most tort is not set without punitive damages. According to practice, one company through the separation of multiple companies, actually also reflects the actual control of one company insolvent fact, if confirmed the behavior trigger the legal personality denial system, in accordance with the law, most will perform difficult, compensation does not reach the designated position. Therefore, the adjustment and reconciliation point out a better way for both parties to compensate, while protecting the interests of the victims, it also brings more opportunities

to China's commercial environment.

5. Conclusion

In general, China's new Company Law has made a good integration and optimization of the corporate personality denial system, and basically corrected the deficiencies of the old law. Substantive law pays attention to the embodiment of the scope of application, and the assignment of the burden of proof in procedural law is clearly defined. At the same time, we need to adapt the recent present situation in our country socialist market economy development. A special provision for the integration of companies, it will greatly reduce the judicial costs of dealing with such cases in our country. At the same time, it is to better safeguard the rights and interests of the parties.

Theoretically, the Company Law belongs to the field of commercial law, and its "active" and "changeable" characteristics mean that the governance in the field of commercial law in China needs to keep pace with The Times, timely reflection and timely revision. China's new Company Law points out a new direction for the legal person personality denial system.

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