

# CORPORATE RESPONSIBILITY BEYOND THE ENTITY: LESSONS FOR VIETNAM FROM ANGLO-AMERICAN LAW

## RESPONSABILIDADE CORPORATIVA ALÉM DA ENTIDADE: LIÇÕES DO DIREITO ANGLO-AMERICANO PARA O VIETNÃ

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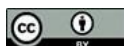
### Abstract

The use of business entities as legal shields for criminal or fraudulent activities has become a pervasive issue in today's economy. To effectively combat such misconduct, it is crucial to pierce the corporate veil that hides the true perpetrators behind these entities. This article explores the legal doctrine of veil piercing, which enables courts to disregard the separate legal personality of a corporation when fraud or other wrongful acts are committed under its guise. The analysis centers on two key questions: (1) what conditions warrant the application of the doctrine, and (2) whether liability should be confined to the shareholders' invested capital or extend to their personal assets once the veil is lifted. The article also examines the application of this doctrine in Vietnam, analyzing relevant provisions in the country's Enterprise Law and related regulations through case studies. Drawing from these insights, the article provides recommendations for businesses and policymakers to minimize legal risks and reduce unintended economic consequences for society.

**Keywords:** Piercing The Corporate Veil. Liability. Business Entity. Enterprise Law.

### Resumo

*A utilização de entidades empresariais como escudos legais para atividades criminosas ou fraudulentas tornou-se um problema generalizado na economia atual. Para combater eficazmente tais condutas ilícitas, é crucial desconsiderar a personalidade jurídica que oculta os verdadeiros autores por trás dessas entidades. Este artigo explora a doutrina jurídica da desconsideração da personalidade jurídica, que permite aos tribunais ignorar a personalidade jurídica distinta de uma empresa quando fraudes ou outros atos ilícitos são cometidos sob seu disfarce. A análise centra-se em duas questões principais: (1) quais as condições que justificam a aplicação da doutrina e (2) se a responsabilidade deve ser limitada ao capital investido pelos acionistas ou estender-se aos seus bens pessoais após a desconsideração da personalidade jurídica. O artigo também examina a aplicação dessa doutrina no Vietnã, analisando as disposições relevantes da Lei das Empresas do país e regulamentos relacionados através de estudos de caso. Com base nessas informações, o artigo apresenta recomendações para empresas e decisores políticos a fim de minimizar os riscos jurídicos e reduzir as consequências econômicas indesejadas para a sociedade.*



*Palavras-chave: Desconsideração da Personalidade Jurídica. Responsabilidade. Entidade Empresarial. Lei das Empresas.*

## 1 INTRODUCTION

The development of corporations—particularly limited liability companies—is fundamentally rooted in two core principles, limited liability and legal personality. Gaining insight into the historical evolution of the corporate form, especially the emergence and implications of limited liability, is essential to understanding its legal and economic significance.

The formation of distinct legal entities can be traced back to ancient times, as societies began organizing for commercial purposes. According to Cohen (2016), this concept first appeared with the Code of Hammurabi (c. 2083 BCE), which recognized the working public as a “society.” Both Cohen (2016) and Hillman (1997) emphasized that Roman law significantly contributed to the evolution of business structures through mechanisms such as “noxal liability” and the development of “actio instituta” and “peculium”, which addressed the complexities of early commercial activities.

In eleventh-century Italy, the “commenda” model was introduced to support investment and long-distance trade. Later, Hillman (1997) highlighted that the term “società” in “accomandita” appeared in Florence in the early fourteenth century, marking a pivotal moment in the legal recognition of limited liability. This concept laid the groundwork for future legal entities designed to separate individual investors' liabilities from those of the enterprise itself.

The expansion of British colonization and the onset of industrialization further accelerated the evolution of business structures. The establishment of powerful overseas trading monopolies, such as the British East India Company (1600) and the Hudson’s Bay Company (1670), exemplified early applications of centralized commercial power. These were soon followed by the formation of Joint Stock Companies, which played a fundamental role in shaping the principles that would define modern limited liability.

Under the influence of the “società” in “accomandita” in Italy, the French term “société en commandite”, or “limited partnership” in English, emerged during the reign of Louis XIV in 1671 and contributed to the development of the French Code of

Commerce by 1876. According to Frederick (1967), by the end of the 18th century, British businesses, even in a new industrial society, were not permitted to draft private charters solely for profit. As a result, business owners relied on joint-stock companies and equitable trusts as alternatives. At that time, joint-stock companies under British law were not considered separate legal entities enjoying limited liability. Their defining feature was the ability to accumulate capital through transferable shares—an attribute inherited by modern corporations. In contrast, equitable trusts not only allowed for transferable shares but also granted beneficiaries limited liability. Frederick (1967) explained this privilege as the protection of beneficiaries from liability to third parties, such as creditors, when debts were incurred by trustees on behalf of the trust. This arrangement proved effective when creditors acknowledged the liability exemption upon the transfer of property to the trust. Trustees, although custodians of the assets, were generally shielded from lawsuits, except under the persistent threat of violating the Bubble Act of 1719.

The corporate model eventually spread to the United States, where several states began enacting statutes that formally recognized corporations as legal entities under state law. Smiddy & Cunningham (2010), in their work, confirmed that New York led the way in 1811, followed by New Jersey in 1816 and Connecticut in 1837. These early laws marked a significant shift toward state-sanctioned incorporation and laid the groundwork for broader acceptance of corporate forms in American commerce. In contrast, the development of the limited liability corporation in Britain progressed more slowly. Frederick (1967) witnessed that while features such as formal charters, transferable shares, and legal personhood began to emerge, the concept remained incomplete until the enactment of the Companies Act of 1862. This legislation was pivotal in standardizing the legal framework for corporations, particularly in a context where inconsistent legal systems necessitated more precise definitions of corporate identity and limited liability.

According to Frederick (1967), corporations, shaped by political forces, served two purposes: to industrialize America as a new nation and to free it from European—particularly British—influence. He asserted, “There is no attribute of the modern business corporation more closely connected with it, in the thinking of the general public, than the limited liability of its shareholders”. Paton (1938) expressed a similar view, describing a corporation as “an entity, separate and distinct from its members,” designed primarily for financial purposes. He further emphasized that “the corporation constitutes an

independent legal entity where its assets and liabilities are separate from the private resources and debts of the individual investors”.

Similarly, Black’s Law Dictionary defines a corporation as an artificial, intangible entity established and regulated by national legislation. It is recognized as possessing “a legal personality distinct from the natural persons” involved. This legal distinction forms the basis of what is now known as the “corporate veil” and is foundational to the concept of limited liability, wherein “the assets and liabilities of the corporation are kept separate from those of its stockholders”. Thus, the entity’s owners are not responsible for any risks, or particularly debts incurred. This is, however, a necessary protection for investors before their consideration to become shareholders. It is understandable that the risks when entering an unsafe environment without protection would cost their fortunes of both their investments and their personal properties if the business entity was unprofitable, suffered from heavy losses, or even filed for bankruptcy. Such risks can be minimized with the protection – limited liability granted by laws to investors as to relieve their anxiety of putting their private fortunes at risk when being a shareholder. For such reasons, limited liability business entities become the subject endorsed by laws. The Enterprise law 2020 of Vietnam, as the next example, regulates the rights and responsibilities of shareholders.

## 2 METHODOLOGY

This article adopts a **historical-legal research methodology**, focusing on the evolution of corporate legal structures and the doctrine of limited liability. Primary legal sources, such as historical statutes (e.g., the Code of Hammurabi, Roman law principles, the Bubble Act of 1719, and the Companies Act of 1862), were analyzed alongside secondary literature from legal scholars including Cohen (2016), Hillman (1997), Frederick (1967), and others.

The study relies on **doctrinal analysis** to trace how legal concepts such as *commenda*, *società in accomandita*, joint-stock companies, and equitable trusts contributed to the development of modern corporate forms. Comparative legal analysis was also employed to contrast developments in ancient Mesopotamia, Rome, medieval Italy, Britain, and the United States. All sources were critically evaluated for relevance, historical context, and contribution to the understanding of limited liability as a foundational corporate principle.

### 3 PIERCING THE CORPORATE VEIL

The establishment of a business entity serves to separate its legal personality from that of its owners, granting it privileges under the law that protect owners and shareholders from creditor liabilities in the event of debts, as noted by the OECD (2001). Brian (2009) further defines the 'corporate veil' as an essentially invisible barrier created by the legal entity, which shields its owners and shareholders from liability, including fraud committed under the entity's protection.

The corporate veil is considered "relative" because a business entity itself cannot commit fraud or wrongful acts directly; rather, it does so through the actions of its owners and shareholders. In other words, the entity acts as a legal "puppet," controlled by its owners or shareholders, who are able to manipulate it for personal gain. This creates a barrier between the entity and its true controllers, effectively shielding them from legal responsibility. The court's jurisdiction is often limited by this veil, preventing it from holding the owners or shareholders accountable for misconduct. To address this, the doctrine of "piercing the corporate veil" was introduced to lift this legal shield and enforce justice against those who intentionally misuse the corporate structure.

The application and definition of this doctrine vary by jurisdiction. In some Southeast Asian countries, such as Vietnam, Laos, and Cambodia, there is limited formal recognition of the doctrine in their legal systems, with reliance instead on precedents and Western jurisprudence. In the United States, the doctrine of "piercing the corporate veil" means that, in specific cases, the owners lose the protection of limited liability. In Japan, Kazuhiko (1971) described it as "the objection of legal entity" (法人化か否認の法理, Houjinkaka Hininno Houri), though this interpretation is less precise compared to the English concept. In France, the Bankruptcy Law of 1967, as explained by Weissberg & Moissinac (1987), grants courts the authority to initiate liquidation proceedings and extend liability to the entity's owners or those with actual control over the entity if they are found to have treated the entity's assets as their own. This was notably illustrated in the landmark case of *Salomon v. Salomon & Co. Ltd* (1897).

Aleka Mandaraka Sheppard (2013) described the case as the "unyielding rock" of corporate law, noting that limited liability protects shareholders' private assets and provides a method of liability limitation that is widely accepted in company law to facilitate business development and international trade. However, an analysis of the case

reveals that the rights of the parties involved may be at risk, as the owners or controllers of the business entity, as previously mentioned, exploited the corporate structure as a shield to perpetrate illegal actions for personal gain.

However, limitations must be placed on the protection offered by the legal framework of limited liability for business entities to ensure fairness in commercial activities, especially in an open market economy where risks are mitigated to attract investors. This principle was affirmed in the case of *Lazarus Estates Ltd v Beasley* (1956) 1 Q.B. 702 (24 January 1956), in which Lord Denning, the judge, declared that:

*“No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgement of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions, whatsoever.”*

The doctrine of “piercing the corporate veil” emerged as a response to the misuse of corporate limited liability, which can lead to unjust outcomes—particularly for creditors—when individuals exploit corporate structures to avoid responsibility. This doctrine seeks to prevent such abuses by disregarding the corporation’s separate legal personality in certain circumstances. Two principal theories underpin the rationale for applying this doctrine: the “alter-ego” theory and the “instrumentality” rule.

Professor I. Maurice Wormser (1912) argued that the doctrine’s application was inherently subjective, as it depended heavily on judicial discretion and could not be easily codified into statute. He introduced the “alter-ego” concept, which posits that when a corporation is merely a façade for its owners—used to perpetrate fraud or evade legal obligations—the court may treat the corporation and its owners as a single entity. In such cases, limited liability is set aside, and owners may be held personally liable for corporate debts. This view was notably adopted by California courts through the “two-prong test”, which evaluates (1) whether there is a unity of interest and ownership between the individual and the corporation such that their separate personalities no longer exist; and (2) whether inequitable results would follow if the corporation’s acts were treated solely as those of the entity.

Similarly, Professor Powell (1931) developed the “instrumentality rule”, first articulated in *Lowendahl v. Baltimore & Ohio R.R.* (1936), which outlines three conditions for piercing the corporate veil (1) the corporation is dominated or controlled

by an individual or entity; (2) this control is used to commit fraud or wrongdoing; and (3) a third party suffers injury or loss as a result.

Despite these frameworks, California courts have acknowledged that both the alter-ego and instrumentality theories have limitations and must be applied with caution to avoid unintended harm to third parties. A central challenge remains: determining whether a corporation, in a given case, is truly an inseparable extension of its owners. To aid this analysis, Professor Powell (1931) also proposed seventeen indicative factors to assess whether veil piercing is justified as,

- (1) The parent company owns all or a majority of the shares of its subsidiary;
- (2) The parent company and its subsidiary have the same Board of Directors and as their employees;
- (3) The parent company controls all over the subsidiary's finances;
- (4) The parent company holds all the capital of the subsidiary and its operation structure;
- (5) The subsidiary has few or not enough capital;
- (6) The parent company pays salaries, expenses, and losses of the subsidiary;
- (7) The subsidiary does not have any substantial business activities other than contracts with the parent company itself, or has no assets other than those to which the parent company lends or transfers to it;
- (8) In the records of the parent company or the statements of its employees, a subsidiary is described as a part or part of the parent company, or its transactions or financial obligations recommended by the owners of the parent company;
- (9) The parent company uses the assets of the subsidiary as its own;
- (10) The director or administrator of the subsidiary does not act independently for the benefit of the subsidiary but must receive executive orders from the parent company for the parent company's ultimate interests;
- (11) The regulations of corporate form for subsidiaries are not complied with;
- (12) There is a transfer of loans within the group, that is, contracts do not maintain the necessary distance, the profit of the parent company is the expense of the subsidiary;
- (13) Parent and subsidiary company records with the same income statements and/or financial statements;
- (14) The decisions of the subsidiary are governed by the parent company and its regulations;

(15) The contract between the parent company and its subsidiary is more favorable to the parent company;

(16) The two companies share the same fund, mutual support, and are managed and supervised as one; and

(17) Subsidiary operates without profit.

From the seventeen key factors as listed above, it is possible to conclude that the doctrine “piercing the corporate veil” could be legitimated upon a corporation during the litigation process if (1) the activities of the entity is controlled, managed, and manipulated majorly by the owners or shareholders, (2) the capital invested into the entity is heavily subsidized by the owners or a particular group of shareholders, (3) the degree of separation between the legal entity and its owners or shareholders. However, the application of such remains a debatable issue as it only exists in the common law and should only be legitimated according to the courts’ viewpoints in which it could be understood as subjective opinions upon subject matter.

#### **4 THE LIABILITY OF SHAREHOLDERS**

Once the corporate veil is pierced, a crucial question arises: to what extent should shareholders be held liable—limited to the amount of their invested capital, or extending to their personal assets as well? Under the UK Companies Act 2006, shareholders are generally liable only up to the value of their contributions to the company’s capital. However, exceptions to this rule exist, particularly when fraudulent conduct is involved.

The Insolvency Act 1986, particularly Sections 213 to 215, provides that if a company was established or operated with the intent to defraud creditors or engage in dishonest trading, the personal assets of the company’s owners and shareholders may be held liable for satisfying creditors’ claims. Furthermore, Section 217 extends this liability to individuals in managerial or directorial positions where wrongful or fraudulent trading has occurred and the company subsequently enters insolvency. Thus, under UK law, while limited liability remains the default protection for shareholders, this protection can be revoked in cases involving fraud, misconduct, or abuse of corporate form, making both capital contributions and personal fortunes subject to legal redress.

In the United States, the principle of piercing the corporate veil has been explored and refined through a range of judicial decisions. A notable early case is *Berkey v. Third*

Avenue Railway Co. (1926), in which Judge Cardozo addressed the relationship between a parent corporation and its subsidiary. He stated, “we thwart the public policy of the State instead of defending or upholding it, when we ignore the separation between subsidiary and parent, and treat the two as one.” This emphasized the importance of maintaining corporate separateness unless clear abuse is evident. In this case, although the parent corporation owned most of the subsidiary's assets, the court refused to pierce the veil, as the subsidiary - Forty-Second Street Railway Company - was shown to operate independently in management and function. Therefore, liability for a passenger's injury could not be transferred to the parent company. In contrast, in *Minton v. Cavaney* (1961), although there was strong indication that The Seminole Hot Springs Corporation existed merely as a shell with insufficient capitalization and no true independence, the court did not apply the alter-ego doctrine. The reason lay in the procedural outcome that the death of the defendant director effectively removed the possibility of holding him personally liable, despite apparent misuse of corporate form. A more decisive application occurred in *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Company* (1976), where Judge Donald Russell ruled in favor of piercing the corporate veil. While merely owning most of a corporation's shares is not sufficient to disregard limited liability, the court found that the entity was used exclusively for the benefit of its owner, Ray Flemming, who exercised complete control over its operations. The corporation functioned merely as a conduit for personal gain, and this abuse of corporate privilege justified holding the owner personally liable. The court ordered that Flemming's private assets be used to compensate the plaintiff.

These cases illustrate the nuanced and highly fact-specific approach adopted by U.S. courts in veil-piercing claims. Mere ownership or control of a corporation is not sufficient to warrant disregarding the corporate form; instead, courts require clear evidence of misuse that results in harm to third parties. From the jurisprudence, it can be concluded that the doctrine of piercing the corporate veil may be invoked when certain indicators are present, including (1) the lack of operational independence — where a subsidiary is entirely dependent on its parent corporation for management, financing, and decision-making, effectively functioning as an extension rather than a separate legal entity; (2) disregard of corporate formalities — when the corporation fails to observe essential legal requirements, such as maintaining proper governance structures, holding regular shareholder meetings, or following statutory procedures outlined in the

jurisdiction of incorporation; (3) inadequate capitalization — when a corporation or its subsidiary is formed or maintained with assets below the legally or commercially acceptable minimum, rendering it incapable of meeting its obligations without the direct financial support of its owners or affiliated entities.

When these elements are established, courts may pierce the corporate veil and hold shareholders, parent companies, or directors personally liable, particularly when the company's own assets are insufficient to satisfy outstanding debts. In such cases, private assets may be subject to liquidation to ensure that injured parties—often creditors—receive appropriate compensation.

## 5 RECOMMENDATIONS

In Vietnam, the doctrine of piercing the corporate veil remains relatively underdeveloped and limited in application, despite ongoing legal reforms and increased awareness drawn from comparative experiences in Western jurisdictions. The most recent Enterprise Law 2020 addresses aspects of corporate liability through several provisions, notably: Article 50 (Responsibilities of members or shareholders), Article 77 (Obligations of company owners), and Article 196 (Rights and responsibilities of a parent company in relation to its subsidiary).

However, a significant limitation in Vietnamese law is its narrow scope of protection. These provisions primarily concern internal corporate relationships, such as those between parent and subsidiary companies, and do not explicitly grant rights to creditors or third parties who may suffer damage due to corporate misconduct. Specifically, Article 196 allows a subsidiary to claim compensation from its parent company if harm arises from the parent's intervention, but creditors or external stakeholders are excluded from pursuing such claims directly under this framework.

Interestingly, the Enterprise Law 2005 did provide broader grounds for accountability. Paragraph 5 of Article 80 stipulated that shareholders could be held personally liable—beyond their capital contributions—if they violated the law, engaged in fraudulent or dishonest conduct for personal gain, or dispersed corporate assets to evade obligations. This clause allowed creditors a pathway to pursue personal liability in cases of abuse. However, this provision was removed in subsequent revisions, including

the 2014 and 2020 versions of the law, thereby reducing the legal tools available to address corporate misuse.

## 6 CONCLUSION

While Vietnam has made notable strides in modernizing its corporate governance framework, especially through the Enterprise Law 2020, the doctrine of piercing the corporate veil remains underutilized and under-defined within its legal system. Compared to more developed jurisdictions like the United Kingdom and the United States, Vietnam lacks a robust legal infrastructure that allows for the equitable treatment of creditors and third parties when the corporate form is misused.

In the UK, the Companies Act 2006 and Insolvency Act 1986 establish clear conditions under which personal liability may be imposed on shareholders, directors, or company owners. The law allows courts to disregard the corporate form when it has been used as an instrument for fraud, wrongful trading, or asset diversion, especially to the detriment of creditors. Similarly, in the U.S., doctrines such as alter-ego and the instrumentality rule, supported by judicial precedents (e.g., *Berkey v. Third Ave. Ry. Co.*, *DeWitt Truck Brokers v. Flemming*), provide practical and case-specific tools for courts to evaluate corporate abuse. These doctrines rely on factors like lack of operational independence, failure to observe corporate formalities, and undercapitalization - criteria which have evolved into multi-pronged legal tests widely adopted in U.S. courts.

By contrast, Vietnamese law only touches lightly on these issues. Although Articles 50, 77, and 196 of the Enterprise Law 2020 define general responsibilities of shareholders and parent companies, they fail to address the rights of external parties, such as creditors, who are most at risk when the corporate form is manipulated. The current framework primarily allows subsidiaries to claim damages from parent companies, excluding external stakeholders from recourse. This limitation significantly weakens legal deterrents against corporate abuse.

Notably, the Enterprise Law 2005 once provided a more progressive approach. Paragraph 5 of Article 80 explicitly allowed for shareholder liability in cases involving violations of the law, fraudulent acts, or asset dispersion intended to evade obligations. Its removal in subsequent revisions has left a significant gap in the Vietnamese legal system, stripping away a key mechanism for corporate accountability.

Therefore, Vietnamese lawmakers should seriously reconsider reinstating such provisions in upcoming legal reforms. The reintroduction of a clause akin to Article 80(5) from the 2005 Law - adapted to modern legal and commercial realities - would enable Vietnamese courts to effectively pierce the corporate veil in deserving cases. More importantly, it would (1) deter fraudulent or unscrupulous behavior by shareholders and company owners; (2) empower creditors and other affected parties to seek redress through legal channels; (3) enhance transparency, fairness, and trust in the Vietnamese business environment; and (4) bring Vietnam's corporate law closer to international best practices.

As Vietnam continues its economic integration and encourages foreign investment, aligning its legal safeguards with international standards is not just desirable but essential. A well-defined doctrine of piercing the corporate veil, with judicial discretion supported by statutory guidance, would strike the necessary balance between encouraging entrepreneurial risk and preventing abuse of limited liability.

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### **Authors' Contribution**

Both authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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