**THE CONCEPT OF PIERCING THE CORPORATE VEIL**

**The Rwandan Law perspective**

*Introduction*

***Article 23 of the Rwanda Company Law, 2018*** provides for a Company as a distinct legal entity. Upon registration of its incorporation documents, a company is duly incorporated as a company having own legal personality, separate from that of its shareholders. Legal liabilities of an incorporated company are completely separate from the liabilities of its members. The veil of incorporation blocks shareholders from being held accountable for the company’s liabilities despite their contribution to the occurrence of the liabilities.

The principle of distinct legal entity was set in the landmark case of ***Salomon vs. Salomon & Co.Ltd (1897, HL)***which states that a company has a separate existence from its members. This concept thus protects the shareholders from being personally liable for the company’s wrong and its obligations.

*Piercing/lifting of the corporate veil*

Courts have in instances ignored this principle of the veil of incorporation in ***Salomon’s case***and held members of a company personally liable for the company’s debts. The exceptions are referred to as “piercing or lifting of the corporate veil”.

Such exceptions include and not limited to; where directors would go ultra vires thus acting beyond the powers conferred upon them either by the statute or by the individual company’s by-laws, when a company tries to avoid legal obligations, where the character of the company is to be determined, instances of suspected fraudulent practices, where it is essential to protect the interest of the revenue, where the company is a mere cloak and where public policy is to be protected.

Piercing the corporate veil, also referred to as lifting of the veil, is a legal concept to treat the rights and duties of a corporation as the rights or liabilities of its shareholders. This concept thus provides for the possibility of looking behind the company framework or its distinct character to make a shareholder liable, as an exception to the rule that they are normally shielded by the veil of incorporation.

The legal concept of Piercing/lifting of the corporate veil is not new in Rwanda as it was perceived by the legislature in various laws and courts have also considered it in various instances.

It is exemplified in ***Article 95(para.5) of the Rwanda Company Law, 2018***which provides that a court may pierce the corporate veil to hold a shareholder liable for obligations of the company if it finds that the shareholder has abused the company form for fraudulent or illegal purposes or abused the company’s assets as if they were personal assets.

In ***MUNYAMPUNDU Antoine vs. Rwanda Revenue Authority (Case No. RCOMA 0673/15/HCC),*** court admitted the seizure that was made by Rwanda Revenue Authority on the property of MUNYAMPUNDU Antoine on the mere fact that M. Antoine has camouflaged the company’s assets for the overall purpose of not allowing potential creditors , Rwanda Revenue Authority included, to get paid and thus he must be held personally liable.

In the supreme court case of ***TWAGIRAMUNGU Vénuste vs.Rwanda Revenue Authority (Case No.RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS***),Court upheld the decision by Rwanda Revenue Authority to seize the personal asset of TWAGIRAMUNGU Venuste on the fact that the company in which he was both shareholder and director defaulted from paying taxes.

The concept of piercing the corporate veil is not omitted in criminal law in circumstances where it is clear that the director or any other person involved is personally penalized. ***Article 5 (par.3) of the law No 47/2018 of 13/08/2018 modifying law No 03/2010 of 26/02/2010 concerning payment system as modified to date*** provides that the criminal liability of a company, an organization, an institution, an association or a group of associations with legal personality provided for in Paragraph One of this Article does not prevent the offenders or their accomplices to be personally prosecuted.

**The concept in other jurisdictions**

**Uganda**

***Section 20 of Uganda’s Companies Act, 2012*** provides that the High Court may, where a company or its directors are involved in acts including tax evasion, fraud or where, save for a single member company, the membership of a company falls below the statutory minimum, lift the corporate veil.

This provision was applied by court in ***Stanbic Bank Uganda Ltd v Ducat Lubricants (U) Ltd (Commercial Division Misc. Application No.845 of 2013),*** where the learned judge considered whether it can be said that the directors of the first respondent/defendant to the main suit were alleged to be involved in fraud in terms of Section 20,Companies Act, 2012.

**Kenya**

***The Companies Act, 2015*** does not expressly provide for lifting of the veil to make members of a company liable for the Company’s wrongs. Instead, directors and company officials are made liable for corporate wrongs in certain specific circumstances. ***Article 1002*** of the Act provides that each person who knowingly participates in carrying on business in fraudulent manner commits an offence. Shareholders can thus be liable under this provision if it is established that they had an intention to defraud creditors.

***The Insolvency Act, 2015*** also provides for directors and other officials to be held personally liable for the debts of a limited company, or to make contribution to its assets in a liquidation, for instance where there has been fraudulent or wrongful trading or improper re-use of an insolvent company’s name.

Courts of Law have also recognized and applied the legal concept of piercing the corporate veil. In ***Justine Nyambu vs Jaspa Logistics (Cause No.201 of 2013),*** the Employment and Labour Relations Court asserted that indeed courts have pierced the corporate veil to see what is happening behind it if there is evidence that the corporate veil is being used to shield fraud and improper conduct on the part of the shareholders and/or the controllers of the company. In this case, court held that managers or directors of the respondent are liable to pay to the claimant the sum decreed by the court, on behalf of the employing company.

**Tanzania**

The ***Companies Act, 2002*** states that from the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as provided for in this Act.

The Act also provides for instances when the Piercing/lifting of the corporate veil can be exercised by courts of law. Article 29 (2) provides that in the event of default in complying with the provision of notifying the Registrar in the event the memorandum is altered to effect change from private company to public company, then the company and every officer of the company who is in default shall be liable to a default fine.

Further, courts have examined the legal concept of piercing/lifting of the corporate veil in various circumstances.

 In ***Musa Shaibu Msangi v Sumry High Class Limited & Anor (2016) TLS LR 430,*** the applicant had been trying to enforce a decree against the respondent company judgment debtors for payment of about USD 80,000.Respondent companies had acted and transacted business through the respondent director. The applicant sought to lift the corporate veil and enforce against the directors or shareholders of the company judgment debtors. Court confirmed the long standing principle of corporate personality as legal personality separate and distinct from the directors or shareholders of the company and can be lifted in “exceptional circumstances”. Respondent director not permitted to hide behind the corporate veil to evade personal liability for debts of companies and given 30 days to pay the amount due.

**United Kingdom**

***Section 16 of the U.K Companies Act 2006*** sets out the effect of registration of a company. A body corporate is capable of exercising all the functions of an incorporated company and has its own existence as an entity. The legal personality of a company is separate from that of the directors and shareholders.

The fundamental principles of English law dates back to the seminal decision of the House of Lords in **Salomon-v-Salomon & Co Ltd [1897] AC 22**.These principles summarily state that: i) every company has its own separate legal personality and identity separate to the identity of directors, shareholders, subsidiary and parent companies ii)Shareholder liability is limited to the amount to be paid up on their shares and, generally speaking, shareholders of companies are not liable for the debts and liabilities of those companies iii) Shareholders have rights and responsibilities arising from the company’s constitutional documents and any other relevant governance arrangements and iv) Shareholders must pay for their shares and are entitled to profits earned on their shares.

However, there are exceptions to these principles, hence piercing of the corporate veil. In an English law context, “piercing the veil” means looking beyond the principle of separate corporate personality in order to fix shareholder(s) with liability for the unlawful acts of the company. In ***Prest-v-Petrodel [2013] UKSC 34***, the Supreme Court unanimously held that it is possible, in very limited circumstances, to pierce the corporate veil. In order to do so, there is a required evidence of a person with an existing legal obligation or liability, or subject to a legal restriction, deliberately evading or frustrating any such obligation or liability by interposing a company under his control (that is, abusing the corporate structure).

The court may, in those limited circumstances, order that the principle of separate corporate personality no longer applies. If there is an alternative legal remedy, however, piercing the corporate veil will be unavailable.

In ***Hare v Commissioner of Customs and Excise*** ***[1996] TLR***, it was held that the lifting of corporate veil is necessary where the company concerned was controlled by the defendants and acted as a vehicle to avoid detection of fraudulent and criminal activities.

Further, in ***Caterpillar Financial Services (UK) Ltd vs. Saenz Corp, Mr.Karavias, Egerton Corp & Ors (2012) EWHC 2888,*** court exercisedits discretion to pierce the veil by granting an application for summary judgment in respect of a declaration that a company was an alter ego corporate vehicle of the defendant thus allowing a judgment obtained against the defendant to be enforced against certain assets of the company.

**France**

Under the French Law exists a comparable principle of separate corporate personality which solely applies to limited liability companies (excluding other corporate forms such as civil companies). Whereas shareholders of limited liability companies are fully protected, in principle, by the corporate veil, their liability being limited to the amount of their contribution in the share capital, shareholders of other types of companies such as société civile, société en nom collectif, société en commandite simple or société en commandite par actions remain fully or partially liable for the company’s liabilities.

This principle of corporate personality is provided for in statute under ***Article 210-6, French Commercial Code for commercial companies*** and ***Art. 1842, French Civil Code for other companies***.

French Case law has drawn several consequences from the corporate veil principle and, in particular, considered that it shall prevent a director or a shareholder from being held liable for the loss suffered by a third-party. However, this principle is subject to exceptions. Thus, if the conditions for piercing the corporate veil of a company are met, the directors or shareholders may be held liable for the wrongful acts they have committed.

In order to pierce the corporate veil, all the following conditions shall be cumulatively met: the loss has been caused by the wrongful act of a director or a shareholder, the wrongful act is intentional, the wrongful act is a gross misconduct and the wrongful act is not intrinsically linked to the performance of the duties of a director or is incompatible with the normal exercise of the prerogatives attached to the status of shareholder.

**Conclusion**

In both Civil and Common Law jurisdictions and hybrid system jurisdiction like the Rwanda, Courts consider the principle of the veil of incorporation as the bedrock on which the Law of Corporation is based. However, both the Statute and the Courts recognize that it is necessary to lift the corporate veil and to see the realities behind the veil.Thus,it is important in compelling situations for courts to ignore the concepts of corporate personality and hold directors and shareholders personally liable.