



PIERCING OR LIFTING THE CORPORATE VEIL OF A CAYMAN COMPANY

The general legal principles regarding corporate personality under the law of the Cayman Islands are similar to those under English law. The general principles regarding corporate personality under English law (as developed in case law decisions in the English courts) have persuasive authority in the Cayman courts even though they do not bind the Cayman courts. For example, the legal principle established in the English House of Lords decision in Salomon .v.Salomon & Co. Ltd. [1897] A. C. 22 that: from incorporation of a company it is a body corporate with separate legal personality capable of exercising all the functions of a natural person of full capacity, including the ability to own assets, to sue and be sued, and perform its obligations, in its own name as a separate legal person distinct from its shareholders, has been consistently observed and followed by the Cayman courts.

Outside the context of particular statutes (and less often, contracts), the English courts very rarely exercise their discretion to lift or pierce the corporate veil. The number of judicial decisions in the Cayman Islands on the doctrine of lifting or piercing the corporate veil is not as extensive as the English case law. However the Cayman courts have consistently followed the English case rulings on the doctrine.

In what circumstances will the Cayman Courts lift the corporate veil?

In exercising their discretion on whether or not to lift or pierce the corporate veil, both the English courts and the Cayman courts appear to make clear distinctions between:

- (i) situations where the court is applying the terms of a statute or, less often, the terms of a contract; and
- (ii) situations where, as a matter of common law based on case law authority, the corporate veil is lifted.

The courts' justification for lifting or piercing the corporate veil in cases involving category (i) situations is to be found in the policy of the statute or the intention of the parties to the contract (e.g. to disregard the limited liability of shareholders of the company). The Cayman courts appear to take the view that the legislature in the Cayman Islands is free to decide that the policy of a particular statute requires that the doctrine of separate corporate personality is disregarded or dis-applied in certain circumstances.





The Cayman courts' approach has been that: it is only in exceptional circumstances where the principle of the separate legal personality of a company is to be ignored and the court will lift or pierce the corporate veil. The circumstances in which the Cayman courts have been, or might be, prepared to "lift or pierce the corporate veil" appear to fall into the following categories:

- i. **Illegal or Improper Purpose** - The Cayman courts have been prepared to lift or pierce the corporate veil where a company has been incorporated and used for an illegal or improper purpose. For example, where corporate personality was used as a device to evade pre-existing obligations of the shareholders to creditors or other third parties, or otherwise to mislead those dealing with a company, its proprietor and/or closely affiliated companies. However there is no consistent line of Cayman case law authority to support the view that the corporate veil might be lifted or pierced in all cases of illegality or impropriety.
- ii. **Fraud** - The Cayman courts have been prepared to disregard the corporate veil in circumstances where a company or group of companies is used as a means of perpetrating a fraud.
- iii. **Agency** - The fact that a Cayman company is wholly owned is not sufficient for it to be regarded as no more than the agent of its sole shareholder. The activities of the Cayman company must be so closely controlled and directed by its shareholder that its business can only be regarded as that of its shareholder, for example where a sole shareholder ignores corporate formalities relating to the subsidiary and acts as if it is the subsidiary.
- iv. **Evading contractual obligations** - The corporate veil may be pierced or lifted where the separate personality of a company is used to circumvent a pre-existing obligation of its proprietor.
- v. **"single economic unit"** - The courts will not disregard the principle of separate corporate personality and treat a closely-integrated group of companies as a single economic unit on the basis merely of perceived injustice. In Adams .v. Cape Industries plc [1990] Ch.433 the English Court of Appeal was of the view that the wording of a particular statute or document may justify the court in interpreting it so that a parent and subsidiary are treated as one unit for some purposes. However, the Court of Appeal indicated that it would be reluctant to go beyond this interpretation.





The categories set out above overlap and a particular set of facts is very likely to be considered within more than one category.

This Briefing Note is not intended to be a substitute for specific legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and general guidance only. For more specific advice on the lifting the corporate veil under Cayman law, please refer to your usual Loeb Smith & Brady contact or:

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