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**THE ILLEGALITIES OF SHELF AND SHELL COMPANIES: FRAUD  
UNDER THE CORPORATE VEIL**

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**INTRODUCTION**

When a business establishes itself with a personality that has a legal existence independent of or separate from its shareholders, directors, officers, and creators, it is said to have a corporate veil. But even though a corporation's liability protection is essential, it is not totally total. When a court tries to look behind the surface to uncover the actual nature of the named firm, this particular corporate veil is lifted. The courts are considered to have the ability and authority whenever an incorporated corporation intentionally attempts to evade its legal duties or is being utilized as a means of avoiding coming into contact with the law, to breach the corporate veil, or the firm's legal identity, and try them in the absence of a company. Holding a parent corporation accountable for its subsidiaries is frequently lifted, eliminating the separation between the owners and the company.

**SHELL AND SHELF COMPANIES**

The purpose of shell corporations, which are private organizations, is to conceal or safeguard the assets of another company. They usually don't have any real assets, income, or even employees—they just exist on paper—but they do have investments and bank accounts. Since these businesses may be easily and affordably established into the established, legal financial system and utilized as platforms for capital raising, stock holding, and limited liability trustee functions, they are not intrinsically unlawful. However, shell businesses may be misused for unlawful purposes together with cash laundering or storing unlawful funds, finished in a

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manner that the final beneficial possession is obscured from the eyes of the regulation or any layman, permitting groups with free get right of entry to clear out cash to offshore accounts.

Shelf businesses on the opposite hand, are organizations which have been used and at the moment are dormant lying-in look ahead to a brand new purchaser. These businesses regularly stay inactive because of loss of trading beneath that particular business. Shelf businesses additionally assist manipulate intangible property or shares. They are generally beneficial to perform over-seas transactions and are a criminal manner of outsourcing paintings to different nations to keep away from tax legal guidelines and try for leniency.

### **ILLEGALITIES OF SHELF AND SHELL COMPANIES**

With the aforementioned records of cash laundering and storing unlawful funds, we can flow ahead with an instance of the way those procedures are carried out. For instance, an accounting company this is in enterprise with a regulation company has formerly received a shelf corporation a quick whilst ago. As already founded, a shelf corporation is a company that exists best on paper so its proprietors can conceal its assets. Take a shell employer, deliver it a financial institution account and tax returns, and therefore allow it season for years on a shelf. A fellow agency could purchase the respective employer, slot their call to it and effectively stroll away with a long time agency with a pre-present history. If the regulation appears in the direction of what occurs at the back of the scenes, the shelf employer is then dissolved and created once more below a distinctive agency call running with the determine employer.

Shelf groups eleven though are completely prison with inside the eyes of the regulation however most effective if this discern business enterprise is the usage of it with inside the proper manner. The accounting company ought to listing them as a representative company and price the regulation company they may be in enterprise with for control services, thereby permitting the discern business enterprise to launder cash quietly to their subsidiary for the reason of stealing cash and lining their very own pockets. Hence, shelf groups could make their consumer seem to have the quality enterprise traits which include stability, legitimacy and great credit score. Buying a shelf business enterprise also can permit a fraudulent enterprise to deceive customers. Another example of shell businesses being hired for unlawful functions is the leak of Panama Papers. This incident uncovered the quantity at which shell businesses have been getting used to launder cash in jurisdictions round the

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arena. The AML chance posed through shell businesses is significant: leaked files indicated that shell businesses have been set up in diverse low regulation jurisdictions which include the British Virgin Island and the Cayman Islands, with maximum of those

Companies connected to outstanding political officers and their households on the equal time. In reaction to those leaks, international tax government round the arena were capable of get better an estimated \$500 million and prosecute corporations and people worried with inside the case for their crook activity.<sup>2</sup>

The method of ill-legitimizing a shell corporation will become pretty a easy method as both the corporation's jurisdiction has lenient tax legal guidelines or that the head/author of the corporation can also additionally never have to show themselves for they are able to employ a nominee director or attorney to confirm their qualifications. It is likewise appreciably more difficult to scope out the unlawful and suspicious sports of shell and shelf businesses as it's miles more difficult to pick out them because of their anonymity, hiding under the company veil for safety and sustenance.

Even with the anonymity that those corporations bask in, there are positive key traits that might also additionally function a telling hand that a shell organisation is getting used to launder money. Such as if there's severe issue in acquiring data approximately the beneficiaries of the transactions or bills that don't have any clean motive and do now no longer contain discernible items and services. An agency that often well-known shows transaction pastime inconsistent with its profile usually such as excessive volumes of transactions depict inconspicuous sports in conjunction with a couple of excessive fee transfers among shell corporations or bills of corporations that offer best the deal with in their registered agent are among the few purple flags that imply unlawful practices.<sup>3</sup>

### **LIFTING THE CORPORATE VEIL FOR INDUCING LIABILITY**

Once a corporation will become incorporated, it will become its personal entity. Its persona is regarded wonderful from individuals who compose the corporation and consequently leads

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<sup>2</sup>Ferrarello, M. *One year after the Panama Papers leak, starting a shell corporation in the US may be easier than getting a library card.* (2017, April 7).

<sup>3</sup>FinCEN. *Potential Money Laundering Risks Related to Shell Companies.* (2006, November 9).

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the courts to reconsider piercing the company veil as doing so might show awful for the economic system and common present itself as a sham to its consumers. The challenge that lies right here is whether or not a company as an synthetic frame is able to committing a criminal offense and may be held chargeable for the equal criminal act. But there were sure exceptions and doctrines that reach lifting the company veil and sell accountability.<sup>4</sup>

For one, in all of the elements the courts appearance at, the presence of fraud, wrongdoing or injustice is a huge pink flag while figuring out whether or not to pierce the company veil or not. In many cases, the claimant is searching for to pierce the enterprise's veil due to the wrongdoing of the enterprise orbits owners. Two, any other state of affairs that could reason a few scrutiny is while there are several associated affiliated or a couple of businesses running beneath the umbrella of one enterprise and failing to preserve separate company identities. To slim it down, let's use an instance when there may be a determine employer and a subsidiary. The determine employer operates and manages the subsidiary employer, affords all of the monetary assist for the subsidiary, presentations the same officers, cope with and commercial enterprise information, and documents consolidated taxes related to the subsidiary employer. The subsidiary manipulate may also possibly be accused of being the adjust ego of the determine employer.<sup>5</sup>

Maintaining distinct identities for the company, shareholders, and is another important factor with the individuals who possess it. This factor is nearly the same as the second one mentioned previously, except it does not include any links. This involves a close connection with the owners or shareholders of other companies. The actual situations where this might happen are when the owners establish a business or LLC but still operate using separate checking accounts, do not realize corporate. Adhere to protocols and treat company resources as personal resources.<sup>6</sup>

Next, is the insufficient capitalization of the company? The problem of properly funding a company alone is insufficient to penetrate the corporate veil on its own. Business, in reality. Owners is not facing punishment from the judicial system for their low earnings or for

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<sup>4</sup> Juned Akhtar & Milind Rajratnam, *White-Collar Crime: Felony Under The Corporate Veil*. (December 5th 2019)

<sup>5</sup> Jimmerson and Cobb P.A , *The Five Most Common Ways to Pierce the Corporate Veil and Impose Personal Liability for Corporate Debts*. (March 2nd 2016).

<sup>6</sup> *Ibid*.

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their actions. Running a business in a disorganized manner. Nevertheless, the common factor in the cases is a lack of adequate capitalization. The company's assets will be examined by the courts to evaluate the business.<sup>7</sup> The level of assets accessible to creditors is adequate. The value of an asset correlates directly with its worth. The objective of the company determines the differences between businesses.<sup>8</sup>

The last warning sign that may result in piercing the corporate veil is the neglect of upkeep business protocols. Compared to employees, business owners are not typically penalized for not meeting requirements. Adherence to corporate procedures must be maintained, failure to do so will result in consequences. Courts have the authority to decide to exempt shareholders from legal liability protection. Claimants have the potential to access the owners' personal assets. In numerous situations, this is often the case. It is not an intentional disregard for protocols, but rather a shortage of necessary resources and staff to fulfil the necessary standards for compliance.<sup>9</sup>

The doctrine of identification is deemed important among the various other doctrines piercing the corporate veil. Based on this information, the responsibility for the offense committed by a company Identity is connected to an individual who is in charge of managing the operations of the business and that the individual is responsible for the offense carried out by the company in question under his/her watch.<sup>10</sup> The instance of *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* is. Doctrine, it was necessary to prove possession only for the purpose of proving the intent to commit a crime. In the absence of any wrongdoing by the corporation itself, the manager of the company will be considered in the same way as the one of the companies itself.<sup>11</sup>

In *Soloman v. Soloman*, it was established that a company is distinct from its owner. Individuals who are in charge of managing it.<sup>12</sup> However, corporations have abused this legal precedent. Shields them using the corporate veil. The trial of *Public Prosecutions v. Kent and*

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<sup>7</sup>*Ibid.*

<sup>8</sup>Jimmerson and Cobb P.A, *The Five Most Common Ways to Pierce the Corporate Veil and Impose Personal Liability for Corporate Debts.* (March 2nd 2016).

<sup>9</sup>*Ibid.*

<sup>10</sup> Juned Akhtar & Milind Rajratnam, *White-Collar Crime: Felony Under The Corporate Veil.* (December 5th 2019).

<sup>11</sup> *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.*, (1915) A.C. 705.

<sup>12</sup> *Soloman v. Soloman*, [1897] A.C. 22.

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*Sussex Contractors Ltd.* noticed that a company can determine its purpose through its employees.<sup>13</sup> In the case of *H.L. Bolton Company v. T.J. Graham & Sons*,<sup>14</sup> the judge compared the position of a company sick, just as a disease affects a person's body. He believed that the negative intentions of directors will harm the company's overall health. The company was found guilty.<sup>15</sup>

However, there is a lack of consistency in assigning blame in this theory. Larger companies are affected by different hierarchies and differences in leadership. The difficulty of imposing criminal liability arises from the interaction between the mind and the operational level.<sup>16</sup> As a result, they each maintain an individual corporate veil. However, this does not signify that parent company, and the subsidiary company together form a single entity but after when the corporate veil is removed, the related companies are intricately linked to form a single entity of one issue.<sup>17</sup>

## **CONCLUSION**

Shelf and Shell companies, along with their hidden crimes, cause severe harm to the economy. If the corporate veil remains intact and criminal responsibility is not assigned, numerous illegal activities may not be detected and could have long-term financial impacts on both victim companies and consumers. The courts firmly believe that corporations should be held accountable, but there is a clear need to revise multiple statutes to remove any ambiguity regarding their liabilities. Relying solely on legal interpretations by the courts may not be enough to make corporations accountable; therefore, there is a need for specific laws to ensure a safer corporate.

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<sup>13</sup>*Public Prosecutions v. Kent and Sussex Contractors Ltd.*, (1944) 1 All E.R. 119.

<sup>14</sup>*H.L. Bolton Company v. T.J. Graham & Sons*, (1956) 3 All E.R. 624.

<sup>15</sup> Juned Akhtar & Milind Rajratnam, *White-Collar Crime: Felony Under The Corporate Veil*. (December 5th 2019).

<sup>16</sup>*State of U.P. and Ors. v. Renuagar Power Co. and Ors*(1988) 4 SCC 59.

<sup>17</sup> VENICIO D’COSTA AND ASHTHA OJHA, *IDENTITY OF A CORPORATE BODY AFTER ‘LIFTING THE VEIL’*, (JANUARY 2019).

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