

The corporate veil: can it be pierced?

The corporate veil has long been in place to maintain that a company is a separate legal entity, thus limiting the liability of shareholders and directors. However, a recent decision by the Supreme Court has outlined that the corporate veil may not always be in place to afford protection to shareholders and directors from liability for the company's actions or debts.

Just last year the Court of Appeal ruled in *VTB Capital plc v Nutritek International Corp and others* [2012] EWCA Civ 808 that there is no legal, factual or principle basis that would allow a shareholder or director of a company to be classified as a party to a contract entered into by the company. Despite this, the court maintained that in some circumstances the company can be identified with those in control of it, allowing the directors and shareholders to be liable alongside the company. This decision was supported by the Supreme Court on appeal, but they did admit that availability of piercing the corporate veil still needed clarity.

The Supreme Court has now offered clear guidance as to the availability of piercing the corporate veil in the case of *Prest v Petrodel Resources Ltd*, [2013] UKSC 34. They have ruled that in exceptional circumstances, the corporate veil can be pierced. This would be in an event where a shareholder or director has abused the corporate veil by attempting to evade the law, or frustrate it under the company's separate legal personality. This will only be available where it is essential to deprive the company, or its controller of the advantage they would otherwise have obtained under the corporate veil, and where no other remedy is available.

This case will by no means open the floodgates to allow directors and shareholders to be held liable for their actions in relation to their company. Piercing the corporate veil will rarely be available, however it is substantial in that it emphasises how important it is for directors to act in accordance with the relevant law when acting under the corporate veil. In addition, whilst third parties may not necessarily have a remedy against directors of a company, the company's shareholders might. A director should always be mindful of the duties owed to their company under the Companies Act and the penalties that they may face as a result of any breach.