THE DOCTRINE OF LIFTING THE VEIL AND ITS IMPLICATION ON CORPORATE GOVERNANCE IN NIGERIA

Introduction
The case of Salomon v. Salomon and Co Ltd (1897) A.C. 22 HL is often considered the basis on which the jurisprudence of corporate personality is established. It outlined the principle which states that upon incorporation, a company is clothed with legal personality which makes it distinct and separate from its directors and shareholders. Incorporation confers on the company a persona juris to which there is ‘no period of minority at its birth and no intervals of incapacity’ which would normally be the case with natural persons. Thus, the debts and obligations of a company would always be borne by the company itself and cannot be passed on to persons who are merely considered to be the directing will or mind of the company.

The above reasoning is in tandem with the dictum of Lord Denning in English case of Bolton (Engineering) Company Ltd, v. Graham & Sons where it was stated that:

A Company may in many ways be likened to a human body. It has a brain and nerve center, which controls what it does. It also has hands, which holds the tools and act in accordance with direction from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will.

Initially, courts refused to permit any exceptions to the Salomon v Salomon principle. However, owing to the massive exploitation of the principle and the multiple layers of insulation which it gives to a company, it became necessary to create some exceptional circumstances wherein courts can lift the corporate veil to know what is happening behind the scenes of the company. This has given rise to legislative and judicial exceptions wherein the legislature and the courts forge a sledge hammer capable of cracking open the corporate shell. Thus, when the notion legal personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons

This Article sets out to examine the legislative and judicial instances wherein courts can lift the corporate veil. It examines these exceptions in line with what may be considered as good corporate governance practices which companies in Nigeria should adopt in order to avoid being caught within these exceptions.

As a set-off position, it is necessary to point out that the concept of separate legal personality would only apply where a company acts with its own name. As noted earlier, the company does not act on its own but acts through its directors and shareholders who have been delegated to act on its behalf. Thus, where a person
acting on such delegated authority enters into contracts in its own name, the assets or liabilities under such a contract would be borne by the individual. In \textit{Sotimunu v. Ocean Steamship (Nigeria) Ltd (1992) NWLR (Pt. 239) 1}, a lawyer instituted an action on behalf of the company without the company authorising the action. It was held that the court had the power to strike out the action.

\textbf{Statutory Instances Where the Corporate Veil Can Be Lifted}

1. \textbf{Section 316} of the Nigerian \textit{Companies and Allied Matters Act, Cap C20 LFN, 2004 ("CAMA")} states that where an investigator is appointed by the Corporate Affairs Commission ("CAC") or by the court to investigate into the affairs of any company, the investigator shall investigate into the affairs of any company which at any relevant time has been its holding or subsidiary company.

2. \textbf{Section 93} of CAMA provides that the corporate veil of a Company can be lifted if after its membership was reduced below the statutory minimum, a company continues to carry on business for more than six months, every person who is a member (director or officer) during that time that business was so carried on after six months, and who knows that it is carrying on business with less than the required minimum number of members will be jointly and severally liable with the company for the debts contracted during that time.

3. \textbf{Section 506} of CAMA states that if it appears that during the winding-up of a company, the business of the company has been recklessly conducted or fraudulently conducted; those responsible may be held personally liable without limitation of liability for any of the company’s debts or liabilities in line with the provisions thereof.

4. If the company’s name is not mentioned in Bills of Exchanges and other negotiable instruments (promissory notes, cheques, etc.) as required by \textbf{Section 631(1)(c) of CAMA}, the officer or any person issuing such instrument on behalf of the company will be personally liable for the amount thereof.

5. \textbf{Section 336} of CAMA requires the group accounting and the separate profit and loss accounts of the holding company and its subsidiaries to be placed simultaneously before the general body. The effect of which is to show the relative financial dependence of the two companies, detracting from the concept of separate legal personality of each.

6. Under \textbf{Section 92} and 94 of the \textit{Companies Income Tax Act, Cap C21, LFN}
2004, the court may lift the veil of incorporation on the allegation of tax evasion, if the device of incorporation is used for defrauding the government.

Judicial Instances Where the Corporate Veil Can Be Lifted

1. There are instances where the court has to determine the character of a company in order to see whether it bears an enemy character or not. This was the position of the court in *Daimler Co. Ltd v. Continental Tyre & Rubber Co. Ltd*.

2. In *International Offshore Construction Ltd v. Shoreline Lifeboats Nigeria Ltd.* (2003) 16 NWLR (Pt. 845) 157 CA, it was held that the corporate shell of an incorporated company can be lifted where the interest of justice so demands.

3. Where the law will be employed as an instrument of fraud, the doctrine of corporate personality cannot be used to protect an illegal venture and this was the reasoning behind the decision in *Merchandise Transport Ltd v British Transport Commission* (1976) 1 WLR 852

Conclusion
In the light of the above, it is worthy to note that corporate governance as a concept essentially emphasizes the attention that should be paid on how a company should be run by those saddled with the sacred and onerous responsibilities of the company’s affairs. The prominence of the board of directors in corporate governance is evident in model definitions of corporate governance which in a nutshell regards corporate governance as the processes and structures by which the business and affairs of an institution are directed and managed in order to improve long-term shareholder value by enhancing corporate performance and accountability, while taking into account the interest of other stakeholders.

Corporate governance is an area we are very passionate about and TOLP has the requisite expertise and experience to provide corporate governance advisory services thereby ensuring the Nigerian entities are in good standing with the rules of corporate governance. At the moment, we act for a couple of corporate organizations where we advise them on corporate governance issues and we project being a leading law firm in this practice area in Sub-Saharan Africa in a few years.