

Global Disputes: Parent Company Litigation

The Trends

Corporate group structures are under attack; the concept of separate legal personality of corporates is under attack; the concept of limited liability is under attack. Claimants, as well as regulators, are increasingly seeking ways to impose direct liability on parent companies, directors, shareholders and sponsors for the acts of operating subsidiaries.

This is a growing trend, particularly in the B2B context. Contractual parties are increasingly likely to bring non-contract claims—economic torts—to impose liability on related parties, whether to address concerns regarding the solvency of subsidiaries and special purpose vehicles, and other contractual counterparties, or to impose additional commercial pressure or obtain additional discovery (including under the United States’ expansive §1782 regime). That trend is likely to become more prevalent as global economies face greater distress.

In parallel, class-action style litigation on behalf of consumers, and regulatory enforcement, means that controlling shareholders and their directors increasingly face the prospect of liability for acts taken by overseas subsidiaries.

Finally, there is an increasing trend for regulators and crime enforcement agencies to apply greater scrutiny in relation to the control exercised by parents (and their directors), including for international sanctions and trade restrictions and, increasingly, in the ESG context.

Understanding these trends enables companies to mitigate the risk of unexpected exposure to claims and regulatory enforcement.

How We Can Help

This is a truly global trend: claimants worldwide are becoming adept at leveraging differences in national courts’ approach to separate legal personalities, and also accessing evidence (including documentary discovery and depositions) and the award of damages.

We are seeing claims arise in a variety of contexts that directly affect our clients, including:

- Claims against parents, sponsors, financial advisers and fund managers in relation to M&A transactions and warranty claims.
- Attempts to ‘pierce the corporate veil’ where portfolio companies or special purpose vehicles are facing distress.
- Direct claims against controlling entities and directors arising from conduct of subsidiaries in overseas jurisdictions.
- Claims against directors and shareholders in relation to antecedent transactions.
- Criminal liability for companies and directors arising from employee and authorized representative conduct.

Through discussion of real-world case studies, we can lead clients through these trends, addressing the core principles in key jurisdictions, relevant trends, and what actions clients may wish to take to mitigate the risks (or, alternatively, to leverage these opportunities to achieve better outcomes for investors).

Who Will Be Impacted?

All corporates with an international / cross-border group structure.

Private equity and hedge funds who operate through special purpose vehicles and limited liability portfolio structures.

Clients that have supply chains overseas in the manufacturing, heavy industry, and extractive industry sectors.

“ Corporate group structures are under attack. Parent companies, shareholders, sponsors and directors should understand these risks and know how to mitigate them. ”

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