COMMENTS ON REASSESSING "CORPORATE VEIL-PIERCING IN CHINA: JUDICIAL TRENDS UNDER THE NEW COMPANY LAW"

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AUTHOR'S CONTRIBUTION

- Author argues that China has a relatively high rate of veil-piercing, and that this has increased post 2023 after legislative revisions to its Company Law regime.
  - Challenges the assumption that the high "veil-piercing" rate stems from judicial misinterpretation or statutory vagueness
  - Provides some comparative analysis and suggests some legal reforms
- Personally, I thought that this was an **excellent research question**.
  - High rate of veil-piercing in China **clearly an anomaly** compared to common law jurisdictions, especially in UK where doctrine is generally seen to be extremely constrained after *Hurstwood Properties (A) Ltd & Ors v Rossendale Borough Council* [2021] UKSC 16.
  - Author also attempts to evidence these high rates of veil piercing through empirical evidence, which I thought was laudable.
- Paper is well-organized and clearly written, with a logical flow and accessible presentation of ideas.

GENERAL COMMENTS: JUSTIFICATIONS FOR VP

Orthodox Justifications for the Veil Piercing ("VP") Doctrine

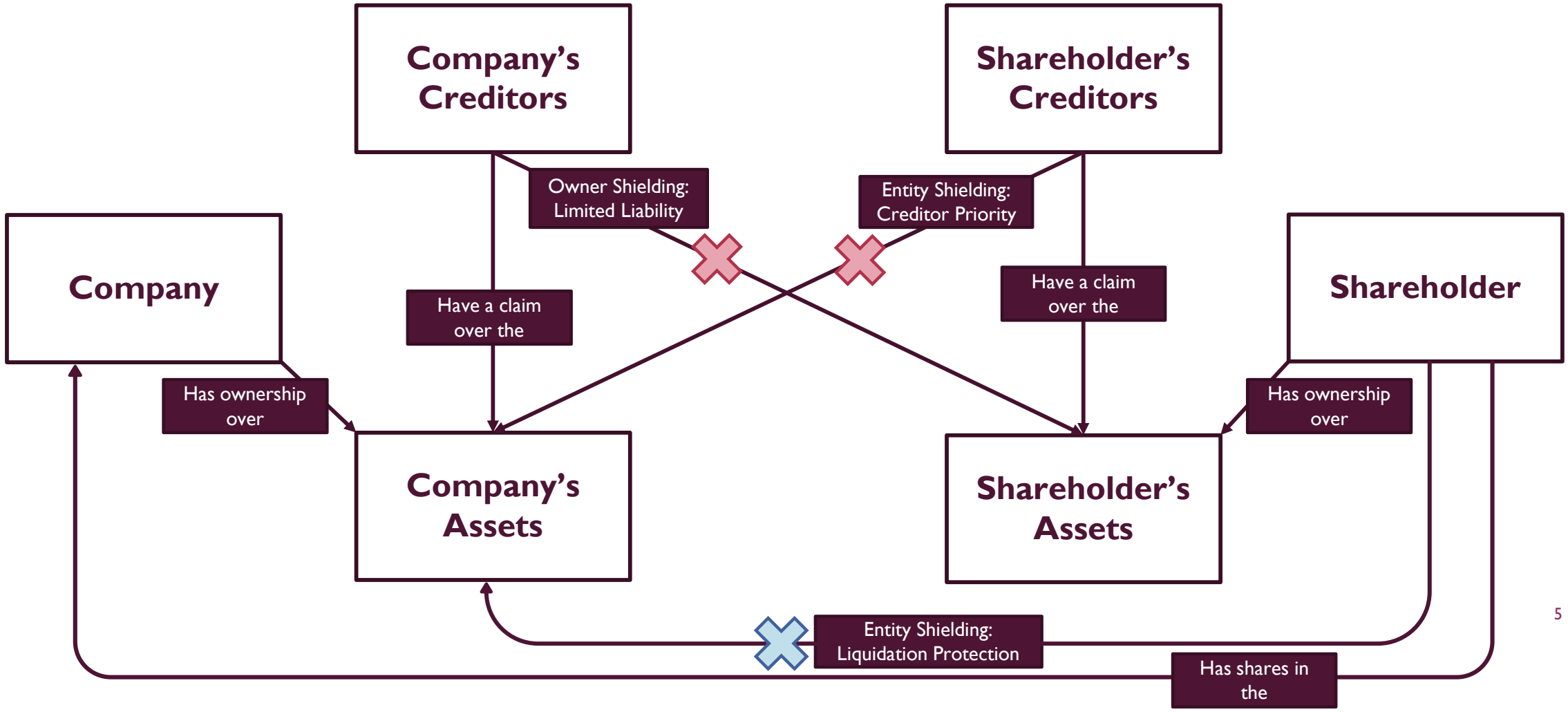
- First, we have to define what VP even means. In the literature, this is seen to refer to a violation of either (Hansmann and Kraakman, 2000):
  1. "Entity Shielding", or "Affirmative Asset Partitioning", where a shareholder's creditors are foreclosed from making claims against the company's assets.
  2. "Owner Shielding", or "Limited Liability", where a **company's creditors are foreclosed from making claims against the shareholder's assets.**
- Author focuses on (2), but not (1). However, in *Hurstwood Properties (A) Ltd & Ors v Rossendale Borough Council* [2021] UKSC 16, the court notes that the doctrine of VP violates (1) and not (2).

GENERAL COMMENTS: JUSTIFICATIONS FOR VP

Orthodox Justifications for the Veil Piercing ("VP") Doctrine

- *Hurstwood* (at [72]-[73]): "Even if there is an "evasion principle" which may in "a small residual category of cases" (per Lord Sumption) justify holding a company liable for breach of an obligation owed by its controlling shareholder, ***we are not ourselves convinced that there is any real scope for applying such a principle in the opposite direction so as hold a person who owns or controls a company liable for breach of an obligation which has only ever been undertaken by the company itself***… That analysis [by Lord Sumption in *Prest*], with which we respectfully agree, seems to us to leave **very little room for reliance on the "evasion principle" to impose upon the controller of a company a fresh liability incurred by the company as distinct from its controller**…"
- Thus, in UK, this type of scenario which Cheng (2025) posits is perhaps not even available to creditors. Author may wish to raise this in her paper to draw a stark contrast.

GENERAL COMMENTS: JUSTIFICATIONS FOR VP



GENERAL COMMENTS: JUSTIFICATIONS FOR VP

Orthodox Justifications for the Veil Piercing ("VP") Doctrine

- This conceptual distinction is relevant to the author's "The Way Forward" section, where she tries to put forth a normative position regarding the VP Doctrine in China.
- While I agree with author's suggestions that more legal certainty is desirable, there are more fundamental costs and benefits associated with a strong/weak VP regime.
  - A very weak or non-existence VP regime may actually benefit creditors and lower the cost of capital (Khoo, 2025).
  - Why? Formalistic application of Coy's SLP promotes capital lock-in, long-term investments, lowers monitoring costs of creditors (encouraging specialization), etc., although there are certainly costs associated with controller opportunism. (Hansmann and Kraakman (2002), Hansmann et al. (2005))

GENERAL COMMENTS: JUSTIFICATIONS FOR VP

Mechanisms

- Author suggests that VP rate is higher in China than in UK/US.
- While this almost certainly true, the standard response by anti-VP scholars (including myself) and judges is that there are other mechanisms which can achieve the same outcome for a given factual matrix without resorting to VP.
  - Classic e.g.: Tort setting where duty of care is imposed on parent coy even if subsidiary coy was held to be the tortfeasor (see *Adams v Cape Industries Plc* [1990] Ch. 433t 544D).
- Is the mechanism of VP the **best** way to provide relief for creditors who are subject to controller opportunism? What about private law?
  - If private law mechanisms are inadequate, this provides one response to high VP rates in China.

THE COMPANY AS A SPECIFIC TYPE OF FIRM

Judicial Decision-Making

- Author notes that there was broader "statutory vagueness" and "judicial discretion" prior to the 2023 reforms.
- However, it does not necessarily follow that this would lead to lower rates of judicial VP.
  - In fact, "judicial discretion" per se doesn't tell us anything about what the rate of VP would be.
  - This depends on the starting position of whether judges are "liberal" or "conservative" regarding VP—are they reluctant to pierce the veil as a default rule?
- If this is the case, then the 2023 reform is essentially an expansion of the VP doctrine, and the author should state so explicitly.
  - Not clear to the reader based on statements in paper whether this is the case, e.g., "the codification of horizontal veil-piercing may have formalized rather than transformed existing judicial tendencies."

THE COMPANY AS A SPECIFIC TYPE OF FIRM

Empirical Analysis

- Good sample size of general VP cases under Art 20(3) (~4.4K in 2020).
  - However, sample size for some of the subsets examined are very small. Only 32 pre 2023 and 15 post 2023 cases which involve sibling companies.
- Q: Why focus on sibling coys if the sample size is so small? Argument on reversals of appeals/retrials is ok, but a change from 2 to 0 would be interpreted by most to be very much a change that could arise from pure statistical coincidence.
  - Difficult to be confident re inferences here with small sample sizes.
- Suggestion: Look at general VP cases and try to include cases with looser criteria re sibling coys. Difficult to imagine that only <0.01% of cases involve sibling coys.
  - Use AI techniques to sift out potential cases (see Khoo and Tallarita (2025)).

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Empirical Analysis

- Author needs to be careful about making causal claims. E.g., "the data thus far indicate that courts are engaging with Article 23(2) more frequently and demonstrating a higher willingness to pierce the veil between sibling companies."
- The causal narrative is not present here for several reasons (we will use *The Journal of Law and Economics* as the gold standard here re replication):

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Empirical Analysis

1. Many other unobserved confounding factors could have led to the increase in VP cases after 2023. These include firm characteristics, litigant (both pf and df) characteristics, case characteristics, court characteristics, and many other unobservable factors. If any *one* of these characteristics were to modify litigation post 2023, causal inference is no longer valid. But paper doesn't try to control for any of these factors—and papers which do (with a whole bunch of fixed effects and fancy ML-assisted DID models) still get rejected everyday in Econ!
2. In Law and Economics, standard problem of selection bias is present when we use case counts/success rates as a dependent variable, since the change to the law can result in a change to settlement rates as well. In the economist's language, settlement rates are endogenous. If you don't observe them, this can lead to very biased/inaccurate results.

THE COMPANY AS A SPECIFIC TYPE OF FIRM

Comparative Analysis

- This part of the paper is very promising, but could be further developed.
- One suggestion: In CL jurisdictions, statutes can often allow courts to disregard the veil as well (some scholars term this "statutory veil piercing", although this is probably not accurate). How is China's position different from these CL examples?
- As mentioned earlier, CL courts may use private law to achieve the same outcomes as per what could be done via VP. Why is this not possible in China?
- Creditors will "self-adjust" their behavior in response to the VP regime. If the VP regime is very strict and controlling opportunism is expected, would the creditors not simply raise their interest rates to take into account such risks? Why does the VP regime even matter?
- In CL jurisdictions, the approach taken with regard to whether the coy is a SLP may be very formalistic in coy law, but NOT so in competition law/tax law. Why is that the case? Can we draw some lessons for China's regime?

Q&A

Overall: Great paper, I hope these comments were helpful!