

How the corporate veil is motivating misbehaviour and obscuring who should take the blame

Written by The Conversation

Company structures with layers on layers are commonplace in the corporate world, just like those of Plutus Payroll Australia, [currently under investigation](#) . But in some cases these structures aim to muddy responsibility.

Companies are abstractions, artificial, they are legal individuals but not humans. The corporate veil – the way these companies are set up, the gatekeeper of corporate artificiality, has historically been a benefit for directors and a sometime burden for outsiders.

The investigation of Plutus Payroll raises questions about the ease with which the relatively simple scheme operated, and the seeming confidence of those involved that they would avoid detection.

In Plutus Payroll's case the holding or parent company SYNAP Equity was separated from the tier 1 subsidiary Plutus, which in turn controlled and was separated from the various other tier 2 companies, which were also separated from each other. All of this structure was hidden thanks to its corporate veil. It was the tier 2 companies that actually paid the wages and submitted a proportion only of the tax deducted from salaries to the Australian Tax Office (ATO).

Companies have many advantages, lower tax rates, perpetual succession, and separate legal entity status. In return the law expects those who run them not to abuse these privileges.

The existence of directors who ignore the seriousness of their position or responsibilities, only goes to advertise that the message is not getting through. Without the benefit of corporate structures, would the directors of any of the companies involved have been confident, or perhaps careless enough, to undertake the scheme? To an observer the arrangement seemed destined to be found out.

This may be a case of the corporate veil, traditionally at the will of humans, beginning to turn the tables and in turn influence behaviour. This is even to an extent that the individuals involved in these schemes, are lulled into a false sense of security. This fabricated confidence then drives unethical behaviour.

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Another recent example of the numbing power of the veil can be seen in the [Queensland Supreme Court's decision](#) regarding the conduct of officers of MFS Investment Management (MFSIM).

MFSIM was responsible for managing the investment fund Premium Income Fund which held millions of dollars of investors' funds, many self-managed super funds. The use of subsidiaries and unlisted management investment schemes may have provided the sense of security [that led the directors] [<http://www.afr.com/business/legal/asic-chase-mfs-directors-for-record-615m-fines-20170526-gwe103>] to misappropriate funds by falsifying and backdating company documents. Directors and other officers received substantial penalties (disqualifications, fines and liability for compensation).

Has the veil has once again been too attractive an ally in the undertaking of unethical conduct? In concluding [his judgement in the Supreme Court of Queensland](#) Justice James Douglas lamented that:

This remains a sorry tale of the misuse of other people's money by those who should have known better.

In an environment where the government needs to counter corporate risk aversion to improve productivity, the corporate veil is not going anywhere. But the veil must not hide the clarity of obligation.

There is a connection between the effect of the corporate veil and the idea of a corporate culture. The failings of companies are often attributed to a poor corporate culture.

However the normalising of the idea may have contributed to the lack of responsibility shouldered by those within company management. Poor culture within a company often simply means a failure of ethical standards by one or all of company management. Yet the focus on "culture" may act as a diversion from individual conduct and the failure to act ethically.

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There was a [recent proposal by Labor](#) to issue directors with a Director Identification Number on the basis that at present very little detail is required of directors when companies are registered. This was also recommended in [2015 by a Productivity Commission report](#)

. This highlights the need to reinforce the responsibilities that arise for individuals when they take on corporate directorships.

This latest move is aimed at curbing the incidence of fake directors, the use of companies to escape obligations, and primarily at phoenixing. Phoenixing is when directors strip insolvent companies, avoiding employee obligations and cease to trade but then form new companies to take their place. This relies on the separate legal entity status and the effect of the corporate veil between the old and new companies to avoid the responsibilities of the previous, insolvent, company.

You can't blame the artificial entity that is the company for all poor corporate behaviour, just as you can't blame the car for drivers' poor driving. Corporate decisions are human decisions.

However it may be possible that the corporate veil, traditionally friend of directors and foe of outsiders, may have turned double agent. It may be working against those directors too careless to monitor their responsibilities, or too unethical to care, by instilling a false sense of security. This then acts to disconnect them from their company's inappropriate, and perhaps criminal, conduct. Ultimately, whenever ethics are abandoned, everyone loses.

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