AF MPANGA
EXCEEDING THE IMPOSSIBLE



When corporate misconduct becomes personal: *the changing landscape of executive liability*

The corporate veil remains a cornerstone of commercial law, but it is no longer an automatic shield for directors and senior executives. As regulators and courts increasingly look beyond the company to the individuals behind corporate decisions, Uganda's boards must reconsider what personal accountability means for effective corporate governance.



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For years, incorporation offered a familiar assurance: the company was liable for its actions, while its shareholders, directors and officers enjoyed the protection of separate legal personality and limited liability. That principle remains fundamental to corporate law. But it does not give individuals a licence to disregard their responsibilities.

Across jurisdictions, regulators and courts are increasingly looking beyond the corporate entity to the individuals who authorised, facilitated, tolerated or failed to prevent misconduct. The question is no longer confined to what the company did. It increasingly includes who knew, who should have known, who had the authority to intervene and what they did about it.

For directors and senior executives in Uganda, this shift has practical consequences. Corporate misconduct can carry personal criminal and civil consequences, even where the company itself has accepted responsibility. Understanding where that liability arises, and how to manage it, is becoming an essential part of effective corporate governance.

Why the corporate veil *no longer tells the whole story*

There's a familiar – though much dreaded – sequence in corporate life. An internal or external audit identifies a regulatory breach. Management, working with in-house and external counsel, engages the relevant regulator. Mitigation is presented and, where a formal finding of culpability is unavoidable, responsibility is placed at the lowest appropriate level within the organisation.

The company pays the fine and issues a carefully worded statement of contrition. The Board is notified and, at its next formal meeting, notes the infraction, expresses regret and approves a change in policy. The directors move on to the next item on the agenda.

The institution has suffered. But what of the people who made, tolerated or failed to interrogate the decision that caused the breach?

For much of modern commerce, this outcome was treated almost as part of the bargain of incorporation. The company absorbed the consequences, while the individuals behind the decisions remained largely untouched.

The corporate form is, without doubt, one of capitalism's most important legal inventions. This ingenious fiction pools capital, separates ownership from management and allows businesses to take commercial risks without exposing every shareholder to personal ruin. But a legal structure designed to distribute commercial risk was never intended to abolish individual responsibility.

A company can enter into a contract and own property. It cannot, however, form a dishonest intention, ignore a warning or decide that a suspicious payment is too profitable to question. Human beings make those decisions.

That distinction is shaping regulatory enforcement to a greater and greater degree. Regulators want more than the company's cheque in settlement of a fine. They want the emails, committee minutes, escalation reports and records showing who received information about the breach and what they did with it.

The questions are increasingly direct:

01	02	03	04
Who knew?	**Who ought to have known?**	**Who had the authority to intervene?**	**What happened when the warning signs emerged?**

The economic consequences help explain this shift. Corporate entities operate in sectors that affect the lives and livelihoods of large sections of the population, including financial services, construction, healthcare and fast-moving consumer goods.

15–18%

Estimated share of Ugandan businesses that operate through formal legal structures

45.5%

Approximate contribution of the formal sector to GDP (Ministry of Finance, Planning and Economic Development estimate)

A breach in these sectors can have consequences far beyond the company concerned, ranging from financial loss and environmental damage to loss of life. Where corporate decisions expose the public to serious harm, it is unsurprising that Parliament and regulators increasingly seek to hold the individuals responsible to account.

The central issue is not whether the corporate veil should exist. It's whether it should protect individuals whose conduct contributed to the company's wrongdoing.

Uganda's position: *separate legal personality is not personal immunity*

Ugandan company law starts from the established principle that a company is a legal person separate from its shareholders and directors. This principle remains indispensable to commercial activity. But separate legal personality is not an automatic defence against personal liability.

Section 18 of the Companies Act, Cap. 106, permits the High Court to look beyond the corporate form where a company or its directors are implicated in tax evasion, fraud or other improper conduct. The provision reflects an important distinction: courts will respect separate legal personality where it supports legitimate enterprise, but they are less likely to do so where the corporate structure is used to facilitate evasion or injustice.

Recent Ugandan decisions illustrate the point.

CASE

Absa Bank of Uganda Limited and 2 Others v Enjoy Uganda Limited and 2 Others

The Court confronted circumstances in which the company had effectively become an untraceable shell and permitted personal execution against its directors.

CASE

M/s Dependable Outcomes Limited v M/s Buildbase Contractors Limited and Others

The allegations were more vivid still, concerning the siphoning of funds and the mortgaging of assets in a manner said to have been designed to frustrate a judgment creditor.

These cases demonstrate the limits of relying on corporate personality where the structure is being used to defeat legitimate claims.

> **The corporate veil begins to resemble not a legal protection but *a curtain hastily drawn after the valuables have been removed.***

Courts are entitled to pull it aside and reveal those seeking to evade their obligations.

Tax and regulatory offences can *expose directors personally*

The position is particularly significant under tax legislation.

Section 82 of the Tax Procedures Code Act provides that, where an entity commits a tax offence, its chief executive officer, managing director, directors, company secretary or treasurer may be deemed to have committed the offence. The individual may avoid liability by demonstrating both that they had no knowledge of, or consent to, the offence and that they exercised due diligence to prevent it.

This changes the practical expectations placed on directors and senior management. It is not always enough to say that an individual did not personally sign the relevant document or authorise the transaction. They may need to demonstrate that they asked questions, investigated concerns and took reasonable steps to prevent the breach.

Comparable provisions under the East African Community Customs Management Act reinforce this approach. The position is also evident in Uganda's regulated sectors, where responsibility increasingly follows authority.

Section 136 Financial Institutions Act	Places duties on directors, managers and officers to take reasonable steps to secure compliance with the Act. Regulatory oversight is therefore not merely an institutional obligation: it carries personal responsibilities for those entrusted with management and supervision.
Section 38 Data Protection and Privacy Act, 2019	Provides for personal liability where a director, manager, secretary or similar officer consented to, connived in or, through neglect, contributed to a corporate offence.
Section 163 Petroleum (Exploration, Development and Production) Act	Provides for the liability of directors, managers, secretaries and similar officers where an offence occurs with their consent, connivance or negligence. Both the individual and the company may face punishment.

Taken together, these provisions reflect a clear legislative direction. Individuals entrusted with corporate authority are expected to exercise active oversight. They cannot always rely on the company's separate legal personality or attribute a regulatory failure to the organisation as a whole.

Why Uganda's approach reflects *a wider global shift*

Uganda is not moving in isolation. Legislatures and regulators in other jurisdictions are also reconsidering whether corporate sanctions alone achieve meaningful accountability.

A corporate fine is ultimately borne by the company and, indirectly, its shareholders. Those shareholders may have had no knowledge of the misconduct and no involvement in the decisions that caused it. If the purpose of enforcement is deterrence, there is a strong argument for holding the individuals responsible to account.

The United Kingdom, South Africa and the United States illustrate different approaches to personal accountability for corporate wrongdoing. Depending on the applicable legislation, liability may arise from an individual's actual involvement, knowledge, consent, neglect or failure to discharge a specific duty to prevent or address a breach.

The important distinction is that a corporate title does not automatically establish personal guilt. Equally, it does not shield an individual from responsibility. Delegating operational functions does not necessarily remove an executive's or director's exposure where the law places a personal duty on them.

For boards operating across jurisdictions, this creates an additional governance challenge. A decision made at group level may have consequences in several countries, each with its own approach to directors' duties, regulatory offences and personal liability. A governance framework that works in one jurisdiction may not adequately address the risks in another.

The practical question for directors is therefore not simply whether the company has complied with the law. It is whether the individuals responsible for oversight have discharged their own legal obligations.

How ordinary governance decisions *become personal liability risks*

Most governance failures do not begin with individuals conspiring to break the law. They often start with a small anomaly and a plausible explanation.

A payment is described as a facilitation fee. An accounting entry disguises an inconvenient loss. A compliance officer's concern is dismissed as excessive caution. An internal audit finding is deferred because the quarter has been difficult. A director requests a fuller paper but agrees that the proposal can proceed in principle.

Six months later, the minutes record consensus. The emails reveal warning signs. Everyone remembers the meeting differently. Even a major environmental incident, such as a dam failure, may have its origins in an earlier decision to defer expenditure to reduce costs.

When the regulator eventually investigates, management may say the Board was informed. The Board may respond that management withheld material information. The lawyer points to an ambiguous minute. The insurer asks when the matter was first notified. The regulator wants to know why nobody intervened.

It is often at this stage that directors discover the difference between believing they exercised oversight and being able to demonstrate that they did. The decisive governance document may not be the policy in the filing cabinet. It may be the contemporaneous record of the questions asked, the answers received and the decisions taken.

This is an important blind spot in corporate governance. Personal liability may arise not only from the individual who commits an offence, but also from consent, connivance, wilful blindness or neglect of a specific supervisory duty.

Non-executive directors are not exempt simply because they are not involved in daily operations. A director serving on an audit, risk or compliance committee may have specific oversight responsibilities that require them to interrogate management's decisions and follow up on identified concerns.

> **Independence is a discipline, *not merely a description in an annual report.***

What should boards do to *manage personal exposure?*

The answer is neither panic nor defensive governance that paralyses commercial decision-making. Boards need systems that enable directors to make informed decisions, identify legal risks and demonstrate that they have acted on the information available to them.

Six practical measures can help.

01

Map personal liability alongside corporate liability

Legal-risk registers should identify legislation that imposes direct, deemed, vicarious or strict liability on directors and officers. In Uganda, this should cover taxation, customs, anti-money laundering, anti-bribery, competition, environmental protection, occupational safety, employment and sector-specific regulation.

Regional groups should extend the assessment to every jurisdiction in which they operate, move funds or implement decisions.

02

Make escalation channels effective

Whistleblowing policies are of limited value if complaints are filtered through the executive implicated in the matter. Boards should provide protected reporting channels to the chair, audit or risk committee and, where appropriate, independent counsel.

Every material concern should have an identified owner, an investigation deadline and evidence of resolution. "Management is handling it" is not an adequate control.

03

Record the challenge, not just the decision

Board minutes should capture material questions, disagreements and management's responses, not simply record resolutions.

Where a director challenges the legality or evidential basis of a proposal, the substance of that challenge should be documented. If the response is inadequate, the Board should consider deferring approval or imposing clearly defined conditions, with an identified person responsible for meeting them and a deadline.

04

Prepare for regulatory investigations

Boards should maintain protocols for internal investigations, document preservation, legal privilege, independent counsel, regulatory notifications and self-reporting.

The first 48 hours of a crisis can shape how the organisation is subsequently judged. A poorly managed investigation may create further exposure through lost documents, missed reporting obligations or conflicts of interest.

05

Understand the limits of D&O insurance

Directors' and Officers' (D&O) insurance is important, but it does not provide blanket protection. Policies commonly exclude deliberate dishonesty, fraud, criminal fines and certain restitutionary payments. Coverage may also depend on timely notification and other policy conditions.

Boards should understand who appoints counsel, who advances defence costs and what happens when the company cannot indemnify a director.

06

Train directors to exercise judgment

Compliance training should go beyond attendance records and generic presentations. It should use scenarios drawn from the company's actual risks, such as questionable procurement commissions, customs disputes, environmental incidents and aggressive tax positions.

Directors should practise identifying warning signs, asking difficult questions and deciding when to escalate concerns. The objective is to prepare them to exercise sound judgment when commercial pressure is greatest.

Personal accountability must not come at the expense of *legitimate enterprise*

There is a danger in discussing executive liability of making directorship sound like an invitation to prosecution. That would be an unfortunate outcome.

Corporate law must preserve room for enterprise, commercial judgment and honest error. Not every unsuccessful business decision amounts to personal wrongdoing. Courts should not turn ordinary commercial failure into a basis for personal liability, and regulators should not use the threat of prosecution as a substitute for sound enforcement.

But the opposite error is equally serious. Limited liability cannot mean limitless irresponsibility.

A company remains a separate legal person. It is not a moral alibi for the individuals who control it. Where an executive authorises unlawful conduct, knowingly allows misconduct to continue or fails to discharge a legal duty to intervene, personal accountability is neither radical nor hostile to business.

It is the proper distinction between commercial risk, which businesses must be free to take, and individual responsibility, which those entrusted with corporate authority cannot simply delegate away.

For Ugandan boards, the practical conclusion is clear. Personal liability should no longer be treated as a remote legal risk for the legal department to consider after something has gone wrong. It belongs on the Board agenda, in committee mandates, in the design of information flows and in the way directors record their deliberations.

> **The corporate cheque may still be written. *Increasingly, however, it will not close the file.***

A VIEW FROM THE BOARDROOM

A former chairman of the board of a regulated institution used to remind management and external counsel of the personal consequences of getting things wrong. He would say:

"I live in Muyenga Bukasa and I have a very good view of Luzira Maximum Security Prison from my house. We have to do this work properly so as to make sure that I do not have to see what my house looks like from Luzira Maximum Security Prison."

It was an unusually vivid way of making a serious governance point. Sound governance is not simply about protecting corporate reputation, preserving shareholder value or satisfying regulators. For those entrusted with corporate authority, it may also be the most practical safeguard of their personal liberty.