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ABSTRACT:

"One of the most complicated cross-border insolvency situations in history occurred when Nortel Networks failed in 2009. When multinational corporations fail in several nations, this study analyzes whether parent companies should be liable for their subsidiaries' obligations. The eight-year Nortel dispute, which included courts in the United States, Canada, and Europe, is the subject of the research, which compares these methods with the legal systems of India and the United Kingdom. With academics like Gower and Worthington supporting stringent restrictions on when companies may be held responsible for the debts of associated organizations, current legal theory sees corporate veil piercing as primarily about fraud or abuse. This research, however, contends that such restrictive strategies fail to account for the reality of how multinational corporations function in the contemporary world. Despite the fact that Nortel functioned as an integrated firm with shared technology and management, the Nortel case illustrates how stringent adherence to separate company rules resulted in unfair results, with creditors in different nations receiving very different sums of money back. It offers a novel Group Enterprise Liability concept after analyzing significant court rulings from American bankruptcy courts, Canadian superior courts, and English high courts, as well as Indian insolvency legislation and British cases. When three conditions are met—the parent company has control over the subsidiary's operations, the businesses operate as a single economic unit, and creditors had a reasonable belief that they were interacting with the entire group—this framework would hold parent companies accountable for their subsidiary's obligations. Existing legislation gives an excessive amount of attention to official business structures rather than the real world. According to this study, legal systems should prioritize economic reality over technical corporate lines and provide viable reforms that safeguard creditors while preserving business flexibility in the modern global economy".

Keywords: Corporate veil piercing, cross-border insolvency, parent-subsidiary liability, twilight zone, Group Enterprise Liability, Nortel Networks, comparative law.

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I. INTRODUCTION:

When businesses fail, it's uncommon for it to make headlines worldwide, but it usually highlights underlying issues in how legal frameworks deal with contemporary business failures. ***The collapse of Nortel Networks Corporation in 2009 brought about just such a moment, forcing courts on three continents to confront a fundamental question: when a multinational firm is legally organized as dozens of different corporations but operates as a single integrated entity, what happens to creditors when things break down?*** Nortel's insolvency stands as one of the most complicated cross-border insolvencies in history due to its integrated operations spanning multiple jurisdictions while maintaining separate legal entities in each, creating competing claims among creditors across different legal systems with varying approaches to asset distribution and liability allocation[1]. This issue is significant because modern multinational corporations frequently portray themselves to the world as unified companies, but they have complicated legal structures that cover many nations[2]. The evident power of the entire business organization, rather than any particular subsidiary firm, is what influences choices made by suppliers, lenders, and other creditors. However, the legal system frequently handles each subsidiary as a separate entity when these companies go out of business, resulting in significantly varied results for creditors depending on the location of their transactions within the corporate structure. The fundamental issue driving this is normative: In cross-border insolvency, when should parent companies be accountable for the liabilities of their subsidiaries? This is a fundamental question about what corporate law should be when companies conduct business internationally while legal systems are still mostly national, rather than a simple technical legal question about current legislation. The existing legislation in this area is insufficient. Unless there is compelling proof of fraud or abuse, each company is seen by traditional business law as distinct[3]. When companies were simpler, this strategy made sense, but it ignores the reality of how today's global corporations are run. Adhering to business separation regulations may lead to outcomes that are both

[1] Re Nortel Networks UK Ltd., [2013] UKSC 52.
[2] José Engrácia Antunes, *Liability of Corporate Groups* 23–26 (Kluwer Law Int'l 1994).
[3] Salomon v. A. Salomon & Co. Ltd., [1897] A.C. 22 (H.L.) (U.K.).

commercially ineffective and, at their core, unjust to creditors when integrated business activities cover several nations and legal organizations. By comparing the frameworks used in India and the United Kingdom, this study analyzes how different legal systems tackle this problem. India employs a cautious strategy, requiring conclusive proof of misconduct before holding parent firms accountable for the debts of subsidiaries. The UK has created a more adaptable system that considers the real ties between businesses and their obligations to creditors rather than focusing on legal corporate structures[4]. Through this comparative analysis, this study offers a novel framework for determining when parent firms should be responsible for the debts of their subsidiaries in cross-border insolvencies. This framework acknowledges that the law should mirror economic reality rather than formal corporate limits, while ensuring the predictability that companies need to function effectively. The objective is to make sure that legal frameworks prioritize justice over simple regulatory compliance in the current global economy.

II. THE NORTEL CASE STUDY: EXPOSING THE NORMATIVE PROBLEM:

II.I BACKGROUND AND CORPORATE STRUCTURE:

Nortel Networks Corporation functioned as a large telecommunications business which affiliates in a number of countries, including the United States, Canada, and Europe. Although its legal framework was split among many distinct corporate organizations in different nations, the corporation operated as a single, integrated commercial company[5]. The company's business model was characterized by a high degree of integration, with centralized management, shared resources, and linked operations. Essential business operations, such as research and development, production, and sales, were coordinated throughout the organization rather than running as separate divisions. The treasury activities were centralized, pension liabilities were shared, and financial resources moved freely between organizations[6]. Despite obvious warning

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[4] Chandler v. Cape plc, [2012] EWCA Civ 525, [2012] 1 W.L.R. 3111 (U.K.).
[5] id
[6] Ian F. Fletcher, *The Nortel Proceedings: A Transatlantic Success Story*, 25 INT'L INSOLVENCY REV. 1, 3–6 (2016).

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signals of financial difficulties, Nortel continued to function during what became known as the twilight zone era prior to the start of official insolvency procedures. While attorneys worked to reorganize the firm, the corporation kept its integrated operations. This time is really important since it shows how the company group operated as a single economic entity even as it neared bankruptcy.

II.II THE INSOLVENCY PROCEEDINGS:

American Procedures: The Approach of the Delaware Bankruptcy Court:

The Delaware Bankruptcy Court adopted a formalist stance, viewing each American subsidiary as a distinct legal body with its own unique assets and obligations[7]. In order to emphasize the significance of business independence, the court disregarded the economic reality of the integrated company activities. Because this method placed a higher priority on legal form than commercial substance, the results were a reflection of technical legal restrictions rather than actual business conditions.

Canadian Proceedings: Choices made by the Ontario Superior Court:

Under the Companies' Creditors Arrangement Act[8], the Ontario Superior Court took a little more flexible stance. In its decisions regarding creditor treatment and asset allocation, the Canadian court demonstrated a greater readiness to take into account the integrated character of the business while yet maintaining corporate separateness. But the court refrained from wholeheartedly endorsing a method of substantive consolidation.

European Proceedings: Decisions of the English High Court:

In dealing with the European organizations, the English High Court had similar difficulties. The conflict between upholding legal certainty through corporate separateness and dealing with the practical realities of the integrated business model was evident in the court's rulings. The

[7] In re Nortel Networks Inc., No. 09-10138, 2009 Bankr. LEXIS 1234, at *12–18 (Bankr. D. Del. May 5, 2009).
[8] Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Can.).

judgements displayed different levels of preparedness to consider economic substance over legal form.

II.III THE NORMATIVE FAILURE:

Creditor Impact: Variable recovery rates among jurisdictions

The most notable result of the Nortel case was the significant disparity in the rates at which creditors recovered their debts across various jurisdictions. Depending on the legal entity they had contracted with and the jurisdiction in which that entity was situated, creditors with comparable relationships to the business were treated very differently. The creditors' fair expectations and the underlying business ties were not related to this discrepancy. As an example, although they were members of the same integrated pension scheme, pension creditors in various nations were treated quite differently. Trade creditors who offered comparable services to the integrated firm were given different recovery rates that were based only on minor legal differences rather than commercial reality.

How Courts Prioritized Form Over Substance in the Conflict Between Legal Formalism and Commercial Reality:

Even when it resulted in results that were at odds with the realities of the market, the courts continued to prioritize legal form over commercial substance. Maintaining fictitious legal barriers between companies was given priority over the integrated character of Nortel's activities, the shared resources, and the central control. This formalistic strategy failed to take into account how the company really functioned and how creditors might reasonably perceive their relationships with it. The deciding factor in how creditors were treated was the legal framework, which was created primarily for tax and regulatory reasons, as opposed to the underlying commercial connections.

Creditors Who Justifiably Relied on Groupwide Representations of the Injustice:

When forming relationships with Nortel, several creditors had relied on groupwide representations and assurances. They logically assumed that the integrated nature of the company would offer some defense via cross-support among the various units. These sensible expectations were disregarded due to the rigorous application of corporate separateness, which resulted in considerable injustice.

II.IV WHY THE COURTS FAILED NORMATIVELY:

The Nortel decision demonstrates a basic normative problem with how courts handled cross-border insolvency. Three major repercussions of the courts' strict adherence to legal formalism undermined the fundamental tenets of fairness and justice in business law. First, the formalistic approach led to arbitrary outcomes that had no connection to the business world. Based solely on technical legal differences rather than the substance of their business agreements, creditors with the same relationship to the same integrated enterprise were treated very differently[9]. This went against the fundamental tenet that similar cases should be handled in the same way. Second, the courts' method betrayed the fair expectations of creditors who had placed their trust in the integrated nature of Nortel's operations. Creditors could logically assume that the company's integrated resources would back their claims when they made agreements with what seemed to be a cohesive worldwide organization. These expectations became worthless due to the rigid application of corporate separateness, which caused a fundamental gap between legal outcomes and business reality[10]. Third, the varying methods used by different jurisdictions undermined legal certainty and predictability, which are the very principles that corporate separateness was intended to safeguard. The diverse judicial responses, rather than offering clear direction, produced a patchwork of erratic outcomes that benefited neither creditors nor the larger business sector.

II.V LESSONS FOR NORMATIVE FRAMEWORK:

What Nortel instructs about the inadequacy of existing strategies:

[9] UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/RES/52/158 (1997).
[10] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2019) 4 SCC 17 (India).

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The Nortel case illustrates that complicated cross-border insolvencies cannot be properly handled by either pure formalism or total ignorance of the law. The formalist method resulted in inequitable results that disregarded economic realities, whereas the absence of specific standards for when to consider factors outside of legal form led to ambiguity and inconsistency[11].

The reason why this case illustrates the need for a new regulatory standard:

Nortel demonstrates that the core issue of when economic integration should take precedence over legal formalism is not covered by the current legal framework. In cross-border insolvency disputes, the case demonstrates the necessity for clear, principled standards that can help courts strike a balance between legal certainty and business reality[12].

Establishing the necessity of comparative analysis:

The diverse ways that courts have dealt with these issues in different jurisdictions demonstrate the necessity for comparative research into how different legal systems have handled them. This comparison will help in the creation of a more efficient regulatory system that respects the legitimate interests of all parties involved and offers consistent guidance across different jurisdictions[13].

III. COMPARATIVE ANALYSIS: INDIA VS. UK APPROACHES:

III.I THE INDIAN FRAMEWORK:

THE LEGAL BASIS:

The Insolvency and Bankruptcy Code 2016 (IBC)[14] of India, which provides only little direction on the liability of corporate groups, reflects the country's approach to business insolvency. The IBC focuses mostly on specific companies and does not provide clear guidelines for when courts

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[11] Binani Industries Ltd. v. Bank of Baroda, (2018) NCLAT 292 (India).
[12] Vanessa Finch, *Corporate Insolvency Law: Understanding the "Twilight Zone"*, 1 J. BUS. L. 543, 548–49 (2009).
[13] UNCITRAL Working Group V, *Cross-Border Insolvency of Enterprise Groups*, Rep. A/CN.9/WG.V/WP.165 (2019).
[14] Insolvency and Bankruptcy Code, No. 31, Acts of Parliament, 2016 (India).

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should disregard corporate separateness in cases of group insolvency[15]. ***The National Company Law Tribunal (NCLT) Mumbai Bench in SBI vs. Videocon Industries Ltd. (2020)***[16] acknowledged the theory of substantial consolidation and approved the merger of 13 of the 15 companies in the Videocon Group. India's historically conservative stance is broken by this watershed judgment. The NCLT went on to mandate that Videocon's foreign oil and gas assets be included in the current insolvency proceedings, indicating that the courts are becoming more and more willing to handle issues involving international borders.[17]

INDIAN APPROACH'S NORMATIVE ANALYSIS:

In the past, India's strategy for breaching the corporate veil has basis on fraud and abuse as the main causes. Courts set a high bar by requiring convincing evidence of intentional misuse before disregarding legal separation, which typically protects corporate separateness[18]. Nonetheless, the Videocon case indicates a shift toward acknowledging economic integration even in the absence of overt deceit. By keeping defined legal boundaries, the Indian strategy offers considerable commercial certainty. Unless there is obvious wrongdoing, companies can be confident that corporate independence will be respected. However, this strict framework may be insufficient to protect creditors who reasonably relied on economic integration or groupwide representations.

REASONS FOR INDIA'S CAUTIOUS APPROACH:

Three related causes explain India's reluctance. First, the legal culture places a higher premium on statutory interpretation than judicial activism, which makes courts less willing to go beyond the letter of the law. The second factor is that complicated cross-border cases needing a lot of coordination may overburden available resources due to limitations in judicial capacity. Third, legislative conservatism demonstrates worries about preserving investor trust in an emerging economy where the rule of law is essential for attracting foreign investment.

III.II THE UK FRAMEWORK:

[15] Umakanth Varottil, *Group Insolvency in India: Rationale and Roadmap*, 13 NUJS L. REV. 1, 3 (2020).
[16] State Bank of India v. Videocon Industries Ltd., (2020) NCLT Mumbai Bench, C.P. (IB) No. 02/MB/C-II/2018.
[17] NCLT Order, SBI v. Videocon, ¶¶ 21–24.
[18] Ministry of Corporate Affairs, *Report of the Insolvency Law Committee*, Mar. 2020, at 45.

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THE LEGAL BASIS:

The Insolvency Act 1986[19] outlines procedures for dealing with cases of international insolvency, while the ***Companies Act 2006***[20] contains extensive rules governing corporate groups. The UNCITRAL Model Law on Cross-Border Insolvency has been implemented in the UK, allowing courts more latitude in coordinating with foreign proceedings.[21] Beyond conventional veil piercing, UK courts have created complex methods for determining corporate group liability. Through presumed duty rather than veil piercing, the direct duty of care notion, as created in cases like ***Chandler vs. Cape***[22]**,** allows courts to hold parent companies accountable.

UK APPROACH: A NORMATIVE ANALYSIS:

When it comes to group responsibility, the UK method uses direct duty analysis to address corporate separateness. The courts analyze whether parent firms have taken over subsidiary activities or creditor connections, using duty to establish liability rather than a formalistic veil piercing. This approach maintains legal consistency while allowing for adaptability in responding to market realities. Without altogether giving up corporate separateness, courts may address creditor expectations and economic integration. The fact-intensive direct duty test, however, is difficult to predict, which reduces commercial certainty.

III. COMPARATIVE NORMATIVE ASSESSMENT:

DIFFERENCES IN METHODOLOGY:

India places a strong emphasis on conventional veil piercing, demanding concrete evidence of abuse before disregarding the barrier between companies. The end result is binary: either total corporate separation or total piercing. Through direct duty analysis, the UK allows for progressive intervention, providing a variety of possible outcomes where courts could hold parent companies accountable without truly breaking the corporate veil.

CONTEMPORARY RELEVANCE:

[19] Insolvency Act 1986, c. 45, §§ 72A–72GA (U.K.).
[20] Companies Act 2006, c. 46, §§ 1159–1162 (U.K.).
[21] UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/RES/52/158 (1997).
[22] id

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India is gradually shifting closer to the UK's more adaptable strategy, as implied by the Videocon decision. A noteworthy development permitting group insolvency procedures is the NCLT's acknowledgement of significant consolidation. However, when compared to the well-established system in the UK, India's experience with complicated cross-border disputes is still restricted.

POLICY IMPLICATION:

COMMERCIAL CERTAINTY:

By preserving defined legal boundaries between corporate organizations, the Indian approach offers better commercial certainty. Businesses can be sure that corporate separateness will be respected unless they commit obvious misbehaviour. The UK method may be more reflective of business realities, even if it provides less assurance.

CREDITOR PROTECTION:

Compared to the UK approach, it seems to be more successful in safeguarding creditors who had a reasonable belief in groupwide statements or financial integration. The direct duty analysis gives courts a more complete picture of creditor expectations and commercial relationships than the Indian method, which is centered on fraud.

CROSS BORDER COORDINATION:

The UK's aggressive jurisdictional strategy and implementation of international insolvency frameworks offer superior methods for coordinating cross border procedures. In difficult multinational insolvencies, India's lesser experience with international cases may present difficulties. Although both strategies have value, the UK's more adaptable system seems better able to handle the normative issues brought out in cases like Nortel, where strict formalism resulted in unfair results even in the absence of fraudulent behaviour.

IV. PROPOSED NORMATIVE FRAMEWORK: GROUP ENTERPRISE LIABILITY:

IV.I THE NORMATIVE CASE FOR REFORM:

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SYNTHESIS OF CASE STUDY AND COMPARATIVE ANALYSIS:

WHY THE PRESENT LEGISLATION IS INADEQUATE:

A comparison of Indian and UK approaches to the Nortel case analysis shows significant shortcomings in the existing legal systems. The Nortel case showed how rigidly adhering to corporate separateness might lead to profoundly unfair results, with creditors receiving extremely different treatment depending on fictitious legal distinctions rather than business reality. The comparative study demonstrates that, although the UK's direct responsibility method is more adaptable than India's fraud-focused approach, neither system offers sufficient direction for complicated cross-border insolvencies. Current methods fail because they treat corporate group liability as an exception to normal norms, failing to acknowledge that corporate groups need different normative treatment. Ignoring the range of interactions inside contemporary corporate groups, the binary choice between full corporate independence and complete veil piercing is an oversimplification.

THE NORMATIVE IMPERATIVE:

In cross-border circumstances, what does justice demand?

In cross-border insolvency cases, justice demands that creditors with similar connections to integrated corporate groups be treated equally, irrespective of technical legal borders. The law should acknowledge this reality rather than hide behind fictitious legal distinctions when corporate organizations present themselves to lenders as a single economic entity and behave as such the normative imperative is especially potent in cross-border situations since creditors are often unable to make a fair evaluation of the complicated legal frameworks of multinational business organizations. When making business judgments, they must depend on economic reality and groupwide representations.

THEORETICAL JUSTIFICATION: WHY GROUP ENTERPRISE LIABILITY IS NORMATIVELY SUPERIOR:

Group business Liability is usually better because it brings legal treatment into line with commercial reality while still providing enough predictability for corporate planning. In contrast to existing methods that either disregard economic integration or utilize ambiguous tests, this framework offers precise guidelines for when group liability should be imposed while still taking into account the legitimate expectations of all parties involved.

IV.II THE THREE-PRONGED TEST:

PRONG 1: WIDESPREAD OPERATIONAL CONTROL:

A parent company or regulating body exerts complete operational control over subsidiary operations beyond typical ownership rights, as defined by its definition. This involves direct participation in daily activities, financial management, and strategic choices.

EVIDENCE:

Judges should investigate operational integration, strategic decision-making procedures, and financial oversight systems. Key indicators include centralized treasury operations, shared senior management, integrated strategic planning, and direct control over critical business choices.

NORMATIVE JUSTIFICATION:

Control should be commensurate with responsibility. Businesses that exert complete authority over their subsidiary activities should be held accountable for the repercussions of those operations. This rule makes it impossible for those with actual decision-making authority to avoid responsibility by using phony legal arrangements.

PRONG 2: INTEGRATED ECONOMIC ENTERPRISE

A company is said to be integrated economically when its constituent parts operate as a single business unit as opposed to individual commercial operations. This integration establishes genuine economic unity rather than the typical parent-subsidiary connection.

EVIDENCE:

Courts should consider shared intellectual property, integrated supply chains, unified branding and marketing, common customer connections, and coordinated business plans. Whether the organizations actually operate as distinct firms or as components of a single entity is the crucial question.

NORMATIVE JUSTIFICATION:

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The legal treatment should be determined by economic reality. The law should acknowledge the reality of corporate groups functioning as single economic units, rather than upholding fictitious legal distinctions. This makes sure that legal treatment is based on business reality rather than technical formality.

PRONG 3: REASONABLE CREDITOR RELIANCE:

A creditor's reliance on a group is reasonable when the group's representations, behaviour, or structure gives the creditor a legitimate expectation of group-wide support. This prong safeguards creditors who, when making business choices, logically relied on group integration.

EVIDENCE:

Courts should look at group financial statements, cross-guarantees, shared marketing materials, and any other indicators of group-wide support. The analysis should concentrate on what rational lenders would comprehend about their interactions with the organization.

NORMATIVE JUSTIFICATION:

Commercial law is based on protecting reasonable business expectations. Companies that represent themselves as cohesive organizations and promote creditor reliance on groupwide support should not be able to evade liability by using technical legal distinctions.

IV.III APPLICATION TO CROSS-BORDER CONTEXTS:

COORDINATION OF JURISDICTIONS:

When using the three-pronged test, the framework would mandate that courts coordinate across jurisdictions. To ensure uniform application of the standards and avoid conflicting judgments on group responsibility, courts should interact with foreign proceedings.

PRACTICAL IMPLEMENTATION:

When applying the three-pronged test, courts would analyze evidence pertaining to each prong and decide if the overall effect warrants group liability. The test offers explicit criteria while permitting fact-specific examination in light of particular facts.

BUSINESS IMPACT:

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By establishing specific guidelines for when group responsibility applies, the framework strikes a balance between creditor protection and commercial flexibility. Companies can organize their operations to prevent liability while still maintaining legitimate business integration.

IV.IV ADDRESSING COUNTER-ARGUMENTS:

Issues of Commercial Certainty:

By defining precise standards for group liability, the framework ensures sufficient predictability. By analyzing their degree of control, integration, and representations to creditors, businesses may determine their vulnerability. This is more reliable than the ambiguous tests that are now used.

Concerns About Sovereignty:

The framework respects national legal systems by offering guidance rather than binding regulations. While maintaining consistency in cross-border situations, the framework may be modified by each jurisdiction to fit its legal system.

Obstacles to Implementation:

While judicial education and international collaboration are necessary for real implementation, these obstacles may be overcome by institutional assistance and gradual adoption. The necessary implementation efforts are justified by the advantages of fairer results.

V. CONCLUSION:

According to the suggested Group Enterprise Liability model, a parent company should be liable for its subsidiary's debts if three criteria are satisfied. The parent company must first have a great deal of operational authority that goes beyond the usual rights of ownership. Secondly, the corporate organization must operate as a single, integrated entity rather than as a collection of independent enterprises. Third, creditors must have had a fair belief, based on the way the firms behaved or represented themselves, that they were dealing with the entire group. When parent firms should be held accountable is clearly defined by this framework, which also takes into account the demands of creditors, shareholders, and commercial certainty. In contrast to existing legal frameworks that depend on ambiguous notions like fraud or abuse, this three-part test provides courts with specific standards that may be used uniformly across various nations. This is important because multinational corporate groups control global business, and the way legal systems deal with group liability has an impact on investment choices, credit rates, and international trade partnerships. A comparison of Indian and UK methods reveals significant distinctions. When corporate groups function as integrated units, India's fraud-focused approach offers commercial certainty but may be excessively stringent in resolving valid creditor concerns. The UK's strategy is more adaptable, but it leaves room for doubt regarding when liability will be assessed. Neither mechanism has adequate regulations for cross-border insolvency cases involving corporate groups. The proposed framework would have allowed Nortel to satisfy all three criteria via its centralized management, integrated operations, and creditor reliance on groupwide support. This would have justified treating the group as a single, unified company and may have avoided the unjust disparities in creditor recovery rates that really occurred. The framework mirrors a wider shift in company law away from strict legal formalism and toward the analysis of economic reality. Modern corporate organizations need complex legal systems that can account for how enterprises really function while still being legally clear. As business structures become more international and complicated, it's likely that this trend will persist. The basic principle is that justice necessitates that the law acknowledges economic realities instead of using fictitious legal distinctions as a cover. The law should acknowledge the reality that business organizations often operate as integrated enterprises and portray themselves as such to creditors. In today's complicated global economy, corporate law can only attain fair results by aligning legal treatment with commercial reality.

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