

PIERCING THE CORPORATE VEIL IN MEXICO

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It is well known that in the law of corporations, shareholders' responsibility is generally limited to that of paying the stock issued to them. For that reason, corporate liability for stockholders will only result from any of the related issues, that is, unpaid capital stock. Since a corporation is treated as another person, it is set by law that individuals behind it as shareholders will not be liable for corporate debts, nor will they be liable for any of the corporate acts or obligations even if they are considered unlawful; at least that is how our system through courts and legal scholars has been considering this matter until today, where judicial opinions prove that separate existence between corporations and shareholders is well recognized and preserved.

Limited liability in business through the use of a corporate entity with separate existence of that of its owners, has been a proper benefit given by law to individuals since the 19th century, with primary intent to promote commerce and industrial growth, since the rule allows stockholders to make capital contributions to corporations without subjecting their personal wealth to the risk of the business. Because of this rationale is that the State will grant corporate status and thus limit liability to the individuals behind it, asking only in exchange, that the corporate business and its purpose are always lawful, and that the principals of basic fairness when dealing with other parties are well observed. Unfortunately, such expectations will not always be accomplished and worst yet, there will be times when through an abuse of the privilege of corporate status, fraud and other unlawful acts will be committed.

As an example, there will be times when a corporation will be illegally formed just in order to limit some individual's liability in some specific type of business —since our legal system does not allow one-member only corporations—. It will show that most of the time, such individuals will cover or own the majority of the issued capital stock, and another person will help in the business or presumably invest figuring as a small or insignificant shareholder, therefore helping with proper compliance of State Law which asks for a minimum of two founders or incorporators. As a result of such practice, the mayor stockholders will gain unlimited control over the company, treating it at their will and with special intention of benefiting themselves only, thus, commingling funds and corporate assets with those of their

own, failing to maintain separate and adequate corporate records, failing to capitalize the corporation adequately, and many other actions with total disregard of corporate interest. At the end, such unlawful practices will inevitably result in an unwanted and absurd economic situation for the enterprise, keeping it from fulfilling its obligations, while on the other hand their controlling shareholders will inexplicably and unjustly have develop a wealthy lifestyle.

When in any given matter, it proves that a corporation has been a mere conduit or instrument to commit fraud, a typical case of disregard of the corporate entity will be at hand, and it will be necessary to search for new ways and legal remedies to solve such problems. Through the use of the *Alter Ego Doctrine*, courts throughout the US have found an equity based procedure that gives way to settling these disputes in a more efficient and fairly manner. In cases where the applicable criteria is met, Courts will *pierce the corporate veil*, disregarding the separate existence of a corporation and treating it and its shareholders as the same person. Again, such purposes will be to protect the rights of third persons when dealing with a corporation, in order to avoid fraud and an abuse of the privilege of corporate status.

Court criteria for piercing the corporate veil will differ from time to time, but when such a solution is taken, an important rule to be considered will always be the fact that there is so much unity of interest and disregard to the corporate form that separate existence no longer exists. Also, such remedy will only be taken when, if no disregard where applied, an unjust and inequitable result would follow.

We must point out that until today, there is no court opinion in Mexico what so ever that intentionally and directly, tends to give solution to corporate abuse problems by disregarding the corporate entity, and thus, finding its shareholders liable for corporate debts. Nevertheless, we strongly consider that proper legal tools already exist in our legal system, and that through cautious and smart use of them, practitioners will be able to pierce the corporate veil in their quest of finding fairly solutions to such problems.

Indeed, we consider that through proper establishment of causes actions based upon civil institutions that sanction fraud like *actio pauliana*, simulation and generally speaking other nullity actions, along with an abusive use of rights theory and disregard to good faith principals in commerce, judicial remedies can be found to disregard the corporate entity, and thus, held shareholders liable for corporate debts where in other instances, it would prove otherwise.

Cases presented before our Court System will be analyzed on a time-to-time basis and each ruling will differ among each other. Nevertheless, we truly consider that with proper counseling and strategic approach, the Alter Ego doctrine could be well applied.