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THE CORPORATE VEIL IN MEXICO: IMPACT AND LEGAL CRITERIA FOR ITS LIFTING

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Executive Summary:

In Mexico, the principle of "separation of assets" provides robust legal protection for companies, establishing their distinct legal personality. This protection shields the partners' personal assets from the company's obligations, a concept commonly referred to as the corporate veil.
However, this principle can be exceptionally lifted in rare cases. If it is proven that the company was created for fraudulent purposes or to evade responsibilities toward third-party creditors, violating the principle of good faith, the corporate veil can be lifted. Two conditions must be met to lift the corporate veil: proving an outstanding debt and demonstrating that the company was created to defraud.

Mexican law protects the freedom of association but allows the lifting of the corporate veil in cases of abuse to protect the community based on principles of coherence, which ensures that the law is applied consistently and logically, and proportionality, which requires that the severity of the measure is proportional to the harm it seeks to prevent.

In Mexico, commercial law establishes, as a general rule, that companies have their own legal personality and assets, separate from those of their partners. This is a fundamental principle of corporate law called **"separation of assets"**.

In this way, legal certainty is granted to the entrepreneurs, who do not compromise their own assets in the face of the obligations acquired by their company as an autonomous legal entity. In the Mexican legal system, this circumstance is known as the **corporate veil**.

On the other hand, based on the principle of good faith and the right to freedom of association established as a human right in the Political Constitution of the United Mexican States, the commercial legislation is flexible with respect to the creation of companies, as long as the requirements established by law are complied with. However, certain national and international cases have arisen in which individuals, abusing this right, create companies in order to avoid the risk of compromising their own assets in the event of non-compliance with their obligations, which constitutes a fraud against the law to the detriment of third party creditors.

An example of this was the 2013 UK case Prest v. Petrodel Resources Ltd, in which the UK Supreme Court ruled in favor of lifting the corporate veil on one of the parties' companies. In summary, one of the parties incorporated several companies and, through them, acquired valuable real estate. However, this real estate was not used to fulfill the corporate purpose of the companies, but was used for the personal benefit of the incorporator. Thus, when a divorce with his counterpart arose, the lifting of the corporate veil was requested in order to demonstrate that the creation of the companies had the sole purpose of concealing the assets under a supposedly foreign patrimony, belonging to an autonomous company. The Supreme Court of the United Kingdom found that the application was well founded and proceeded to lift the corporate veil of the companies, separating the real estate assets from their assets and adding them to the divorce settlement.[1]

Returning to the framework of Mexican law, the First Chamber of the Supreme Court of Justice of the Nation ("SCJN") starts from the fundamental premise that the separation of assets between the partners that make up a company and the company itself, as an autonomous legal entity, effectively guarantees that the partners will not respond for the debts of the company with their personal assets, but that this will be done with the company's assets. In the event that the company does not have solvency, the partners will only be liable up to the amount of the capital contribution they have made.

However, in Mexican law, the lifting of the corporate veil of a company is exceptionally admissible. Under a criterion similar to that of the cited case, the SCJN has determined that, in order to avoid the abusive exercise of a right (freedom of association) to evade compliance with legal obligations and duties, it is possible to lift the corporate veil when it is proven that the creation of the company was for the purpose of defrauding third party creditors or simulating a legal act contrary to the principle of good faith provided for in Mexican law.

As mentioned, in Mexico this measure is of an exceptional nature and is only applicable in certain cases, since the general rule is the separation of assets, which constitutes a guarantee of legal certainty for businessmen.

In order to proceed with the lifting of the corporate veil of a company, certain objective and subjective elements must be proven. First, as an objective element, the existence of a debt and the breach of an obligation owed by the company must be reliably demonstrated, using the relevant means of proof. Second, as a subjective element, the judge must be provided with a factual context: a relation of facts and rights that evidences that the creation of the company in question was for the purpose of defrauding third party creditors or simulating a legal act, in contravention of the principle of good faith provided for in Mexican law.[2]

In conclusion, Mexican law is flexible with respect to the incorporation of companies for lawful purposes, allowing any person or group of persons to exercise their human right to freedom of association. However, when this right is abused to the detriment of a third party, in order to defraud it and avoid liability, Mexican law allows, under specific circumstances described above, the lifting of the corporate veil to protect the collective. All this, always under the responsibility of the judge, who must attend to the principles of coherence, reasonableness and proportionality that must guide the decisions of Mexican judges.

[1] See UK Supreme Court judgment, available at https://supremecourt.uk/uploads/uksc_2013_0004_judgment_5132540ebe.pdf.
[2] See the thesis entitled " CORPORATE VEIL. AS A GENERAL RULE, ITS LIFTING CANNOT BE ORDERED AS A PRECAUTIONARY MEASURE IN PRELIMINARY PROCEEDINGS" and digital record number 2029943.

Iván Castelán
Law Clerk
ivan.castelan@s-s.mx