Title:
X.2 - Piercing the corporate veil

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(a) The separate legal personality of a corporation ("corporate veil") may be disregarded in exceptional cases in order to
hold a shareholder liable for the corporation's debts.

(b) Exceptional cases are cases of:

i) clear under-capitalization,

ii) mingling of corporate and financial spheres, especially in case of total control of the parent company over the
business and financial affairs of its subsidiary, or

iii) fraud.

Commentary:

1 The Principle reflects situations in which the idea of the nature of corporations which constitute entities that are
separate and distinct from its members, who are liable only to the extent that they have contributed to the company's
capital, must be disregarded due to the application of the Principle of good faith. More specifically, the Principle is an
example of the prohibition of the abuse of rights, here the abuse of the principle of separate legal personality of corporate
entities to the detriment of their creditors who have relied on the independent and sustained existence of those entities.

2 In all three scenarios listed in the Principle, the concept of the corporation as a separate legal entity is misused by its
founders or initiators. In these cases, the corporation is a mere "façade", used by its founders to shield themselves from
claims raised against them by their creditors by hiding behind the corporate entity which they have established but which
does not possess any assets necessary to satisfy the claims of these creditors.

3 It must be emphasized that the Principle is an exception to the fundamental rule of corporate law that corporations
possess separate legal personality. The application of the Principle therefore requires not only an element of abuse of
rights, but also a very strict test, i.e. clear, convincing evidence of under-capitalization, mingling of spheres or fraud, so as
to ensure that the Principle remains the exception.