

**COMPANIES IN THE NAME AND FOR COLLECTIVE QUOTAS
A LOOK AT THE LIABILITY (I) LIMITED**

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Resume:

The defense of the "Heritage" against current acts that endanger or potential risk of losing is a natural attitude of man and, therefore, everything is either on the fact that point of view, either on the right so that your private sphere is respected by all. And so, in the field of Commercial Companies (Entities under which takes place roughly formal business activity), no separation of its assets (the one necessary for the pursuit of the Company's purposes of these) and the personal assets of partners within it. Minimizing the risk personal assets of the partners in order to reassure and encourage entrepreneurial activity, it has been one of the reasons for this asset separation (the Company in relation to the partners). Yet, experience shows that the partners can take advantage of the equity split of the Company in relation to its assets (which, under the Act, is reflected in the limited liability of the Company) to third prejudice, usually creditors calling, exactly, this asset separation, and thus evade up to the obligations they would have with such third parties through the Company. It is for this reason that the Legal Order provides for the Liability Company Unlimited, on the one hand, and on the other, admits that checked to be certain factual and legal assumptions that reveal the deviation from the purpose of the limited liability, the separation of assets can know (un) limitations; that is to say, after all, slights, the point of the personal assets of the Company's partners concerned - the one who was supposed to not be hit by lenders to meet the debts of the Company - now be called for this purpose. Look at

the legal framework Corporation on behalf Collective and shares in the responsibility (i) limited respect is the objective of this work. Analyze the current consistency of the figure of the limitation of liability in the Companies Act, taking into account the types now announced (on behalf Societies Collective and shares) is the specific goal. That is to say that once possible (similar to what happens in the Corporation on behalf Collective) under the responsibility Unlimited and piercing the corporate veil Corporation, the assets of the shareholders of the Corporation on behalf Collective and shares be called to account for the debts of the Company, it seems to be the principle of Limited Liability Corporation Commercial getting weaker and weaker. The right of Commercial Companies, as a whole, must be the path of decay, once shaken one of its main pillars (a Limited Liability) and thus the legal order becomes more careful to protect third-party interests in the part of the credit to the Company. The real defense of the personal assets of the partners cover any liabilities of the Company to third parties lies, in our view, in: a) acting in good faith of the partners, especially in the management of the Company; b) respect for the legal order as a whole, and especially by the standards of the Corporate Law;

Key words: Right. Commercial Companies. Responsibility. Partners. Disregard. Limitation.

Abstract:

Defending "patrimony" against current acts That put you at risk or the potential risk of losing it is a natural attitude of man, and so he does everything from the point of view of facts, as well as the right of Which its private sphere is respected by all. Thus, in the field of commercial enterprises (business entities on formal activity is largely Which Performed), there is a separation between Their assets (Which is Necessary for the achievement of the company's objectives) and the personal assets of the partners. they're part. Minimizing the risk of members' personal assets to reassure and the Business Activity Encourage will Have Been one of the Reasons for this separation of assets (from the company to the partners). However, experience shows que members can take advantage of the separation of company assets from Their company (Which According to law Translates into limited liability of the company) to harm third parties - Usually Creditors, exactly invoking this separation of assets and Thus Avoiding the They would have Those with third parties through the company. That is why the cool system Provides for an unlimited liability on the one hand, and, on the other, that, provided que factual Certain and cool

grounds show que the objective of limited liability is misused, if it is to say That the personal assets of the members of the company in question are after all to Those Who Should be affected by the lenders in order to meet the company's debts, it is now called to the OS. Looking at the legal system of corporations in a collective name and by shares in Which: (i) Limited Liability Relates is the general objective of this work. Analyzing the consistency of the current figure of limitation of liability in commercial companies, taking into account the types disclosed Currently (corporations and shares) is the specific objective. It is a case of saying que since it is possible (as in the case of corporations) by virtue of unlimited liability and disregard of corporate cool personality, the net worth of companies in the collective and responding to the debts of society, US be the principle of limited liability of business enterprises to stay weaker and weaker. Thus, company law as a whole must be on the way down once one of its main pillars Has Been shaken (limited liability) or, Thus, the cool order passe more prudent to protect third parties' interests in credit of society. The true defense of the members' personal assets in the face of possible liabilities of the company to third parties is found in: a) acting in good faith of the partners, Especially of the managers of the company; b) respect the cool system as a whole; Especially all and by the corporate rules of law and c) strict corporate governance.

keywords: Law. Business partnerships. Liability. Partners. Disregard. Limitation.

SUMMARY

1. Responsibility (i) limited the Companies.
2. The responsibility of the members to the creditors in the Corporation on behalf Collective.
3. The responsibility of the members to the creditors in Limited Liability Companies.
4. Piercing the corporate veil of Companies as a factor of (un) limitation of liability in Limited Liability Companies.
5. Which way is to tread the right of Commercial Companies with the possibility of (dis) limitation of liability?

1. Responsibility (i) Limited Corporate Commercial

The protection of personal assets of entering the business life by the Companies is a crucial issue in advance to consider when having to know the kind of responsibility that attends each kind of society is limited or unlimited in case of debts of Societies the 3rd. It can therefore happen (if the Trading Company is Unlimited Liability, and is thus vulnerable to the limit between the company's assets and the assets of the Partners) that the personal assets of the partners is also responsible for the debts of the Company. Just can not be true as a rule if the society concerned, the debtor, is of limited liability.

It is to prevent the free range of the personal assets of the shareholders by the Company's creditors that were designed by the Roman-Germanic Liability Companies Limited doctrine; limited, because in case of debts of the Company to third parties, responds in principle, only the assets of the Company to that which belongs to the debtor company, getting out the personal assets of the partners. This formula obviously safeguard the interests of entrepreneurs who work through Companies. But the law does not leave orphans creditors. Terms that provides solutions that enable personal liability of the shareholders for Corporate debts.

Thus, we have the Commercial Companies two distinct types as responsibility for their debts to third parties. Thus, Limited Liability Companies, and Liability Companies Unlimited.

However, today is becoming less consistent the Limited Liability Corporation Commercial opening up, in our view, room to question the relevance of the permanence of the rule of limitation of liability in the Companies Act.

2. The responsibility of the members to the creditors in the Corporation on behalf Collective

Societies on behalf Collective is the oldest Corporate kind that still exists in Mozambique, the legal regime set out in Articles 253 to 270 of the Commercial Code. By virtue of its constitution have as a fundamental assumption, the personal element, the doctrine considers (as opposed to the Capital Corporations) of People Society. It is the kind of paradigmatic Corporate Unlimited liability.

With regard to the liability of the partners towards the company creditors, the Society members on behalf Collective account for the obligations in the alternative, in relation to the Company and jointly and severally with each other as states the number 1 of Article 253 of the Commercial Code . The Subsidiarity liability of shareholders in respect of the Company consists in their, via their personal assets, called for creditors to respond for the debts of the Company after the run the company's assets to cover debts in question. So without that runs the assets of the Company, the lenders should not attack the own assets of the partners. In turn, the responsibility is joint, in that the company's creditors have the right to require any member to pay the debts. However, any of the partners may advance to meet the obligations of the Company and may, for this attitude, have a claim against the other partners in the proportion in which each share in the losses of the Company, ie in accordance with paragraph 2, the Article 253 of the Civil Code. There is also on the characterization Corporation on behalf Collective, as the responsibility of the partners, the thought that the partners respond staff, solidarity, subsidiary and unlimited, the company's debts¹.

3. The responsibility of the members to the creditors in the Limited Liability Companies

Unlike the case with the Companies on behalf Collective, almost nothing adopted in recent decades in Mozambique, the Corporation shares are the most frequent, being a day made several of them in different parts of the country. This setback labeled options for primacy Corporation by quotas is demonstrative of the fear that people have to risk your personal assets for the debts of the Company.

Although some consider the under the doctrinal point of view, as "capital companies"²It seems to us to be "Societies of people," to the extent that its constitution has been predominantly based on reliable assumptions among its members, are not generally made up of people with no history of

¹ About this way of understanding (... each partner responds with his personal assets jointly and severally with the other partners and without fixed limits, to the creditors of the Company and its debts (including prior to their entry, but not by following its exit) v. by all PUPO BELT, Commercial Law, 12th edition, revised and updated, EDIFORUM-Legal Issues, Lisbon, 2011, pp. 134-135.

²V. For all this duality of understanding of the doctrinal types of COUTINHO DE ABREU Company, Commercial Law Course, 4th edition, 2011, Almedina, pp. 67-72.

mutual understanding. Other than that, the fact that, as we shall see in the following paragraphs, be possible, in part, unlimited, certain partners assume personal liability for the debts of the Company, and the reality of joint liability and subsidiary to this (characteristics of the paradigm Corporation Unlimited Liability) Societies on behalf Collective refer, hopelessly, to the thought that these are indeed Societies of people. However, for the respected Professor of Law Faculty of the University of Coimbra, Coutinho de Abreu,³.

In general partners of the Limited Liability Companies do not respond for the debts of the Company. Only the social heritage responds to creditors for the debts of the Company, Article 286 of the Commercial Code. Unless the Articles of Association provide that one or more partners, and liability towards the Company with regard to its inputs in accordance with Article 283 of the Commercial Code also accountable to the Company's creditors to a certain amount; this responsibility can either be integral with the Company as a subsidiary in relation to it, but to be the same for all partners so they should respond.

The responsibility of the partners took over the Society of contract - Partial unlimited liability - covers only the obligations assumed by the Company as partner to it belonged, and are not transmitted by death of this without prejudice to the transfer of the obligations that previously was tied , as established in number 2 of Article 287 of the Commercial Code.

Unless otherwise provided by contract, the shareholder who pays company debts, pursue remedies against the Company by all that he has paid, but not against the other partners (number 3 of Article 287 of the Commercial Code).

We see, therefore, that the liability limited in Corporation shares is not, so to speak, perfect because of the possibility that there is partial limitlessness of personal responsibility for some of the partners on the basis of terms of the Memorandum of Agreement, and by having some aspects of the legal regime of liability of shareholders for the debts of the Company in the name Collective Societies, especially, subsidiarity and solidarity. But not only that, as we shall see in the next section, for there is also the possibility of Liability limited by the Company's shares be removed by piercing the corporate veil.

³ Course, op. cit., p. 69.

4. Piercing the corporate veil Corporate Commercial⁴ as a factor of (un) limitation of liability in Limited Liability Companies.

The piercing the corporate veil is the means by which (checked to be certain factual assumptions in the light of the law of a particular jurisdiction, it comes to the understanding that a certain member (or members) of a Trading Company took advantage of the Company for the benefit itself through the Responsibility limited to damage to third parties, particularly the Company's creditors) and thus departs from the principle of the separation of the Company's assets debtor and (s) partner (s) in order to allow the partner is obliged to respond the debts of the company with their own personal assets once measured his guilt that damage caused to third parties via the Company.

It appeared for the first time in US law, and based on the theory of "disregard of the legal entity."⁵ "In fact, the first decision in which the North American courts have applied the principle of disregard of the Legal entity doctrine or, as it came to be called, piercing the veil corporate, dates back to 1809, in the case Bank of the United States"⁶⁻⁷

⁴On this subject, see. for all the PhD thesis written by MARIA DE FATIMA RIBEIRO, The Trusteeship Creditors Corporation Shares and "piercing the corporate veil", Almedina, Coimbra, 2009; COUTINHO DE ABREU, ob.cit., Pp. 176-187; JAIRO SIT-SEE, Disregard of legal personality in Journal of Master in Economics from the Federal University of Bahia law. Salvador UFBA, vol. 4 (July 1993 to December 1995); PETER LAMB, The piercing the corporate veil of Commercial Companies, AAFDL, Lisbon, 1989; . PUPO BELT, Commercial-Law Company Law, 12th ed, Ediforum, Lisbon, 2011 (turn in note 308 of this work, indicates a wide range of authors who have studied this matter); Menezes LAMB, The lifting of the collective personality in Civil and Commercial Law. Coimbra: Almedina, 2000; ROLF SERICK, Apariencia reality y en las Societies Mercantiles: el derecho abuse by means of her legal persona. Barcelona: Ediciones Ariel, 1958.

⁵V. PETER LAMB, The piercing the corporate veil Corporate Business, 2nd ed, Theses, University Lusíada Publisher, Lisbon, 2005, p. 27 for further developments cit., J.LAMARTINE Corrêa de Oliveira, "The Double of corporate crisis", cit., P. 264 ff., PIERO VERRUCOLI, "overcoming those obstacles II della personalità giuridica delle società capitali nella common Law and Civil Law nella," Milano 1964, with special reference to German law, Swiss and Austrian and German authors.

⁶V.FÁTIMA RIBEIRO, The Trusteeship ... ob. cit., p. 95, note 29.

⁷ It started as designated in the US by (where the issue arose) "piercing the veil" and other Anglo countries Saxon for "lifting the veil corporate", and the other Anglo Saxon for "lifting the veil corporate", "disregard of the Legal entity", v. this same sense COUTINHO DE ABREU, op. cit., footnote 32, pp. 176-177, this note the author presents a range of authors-Germans who have studied the issue of piercing the corporate veil. Other denominations of the theory of piercing the corporate veil, according JAIRO SIT-SEE, Disregard of legal personality ... ob. cit., p.282. "The theory that we will study is being devoted in many countries, where it has received lettering several (...) - Theory lifting the veil corporate and cracking open the corporate shell. In the Roman-Germanic countries, have

However, despite the case law have provided a vast field of research, the dogmatic framework of the problem was not, as is moreover characteristic of the Anglo-American systems.

The issue has raised interest to continental European jurists and also South Americans, but with particular emphasis, to the Germans.

In Germany, the unrest arose from the activity of the courts. Until 1920 it had been solely into account the strict separation of the Collective person and their partners.

Only in its judgment of 06.22.1920 is a German Court left that initial position was markedly positivist⁸.

In the case concerning a Sole Proprietorship (where, of course, the problem of separation of company assets and the partner is more evident), the Court based its decision on the grounds subsequently widely used, according to which the judge should - before legal drafting - to consider "the reality of life and the force of things." Although the Judgment, to be disclosed, it was not without its critics, it is the milestone of turning that would generate all future discussion of piercing the corporate veil.

Other Judgments succeeded him on grounds which, although different, desaguariam the same reason justifying the disregard; thus support the "nature of things" in the "prominence of the reality on the way" in the "bypass the law", the "dominant popular consciousness" or the "economic needs", justifying decisions on the same claim. These foundations were built and developed by the courts thanks to the legal abandonment and progressive turning positivism that gave prominence to the case law of the Heck interests.

In the previous doctrine to the 2nd World War confronted each other because, fundamentally, two currents of opinion.

other denominations. Italy was labeled overcoming those obstacles della personalità giuridica. In Germany, for its part, is called durchschriff der juristischen person-penetration of the legal entity. The Argentine law usually think of it as a theory it penetracion or desestimacion of her personality. "

⁸historical development according FATIMA RIBEIRO, The Guardianship of creditors ... ob.cit., pp. 76 ff, v, tb., COUTINHO DE ABREU, Da entrepreneurship (Companies in Law), Almedina, Coimbra, 1996, pp. 206 ff.

In the first, tried to maintain the separation between the Corporation and its partners, seeking to thus find a solution to the problems detected in the general rules of civil law. Through the second, it was identified the Sociedad Unipersonal and your partner based on the parallelism of interests existing between both subjects.

In the first decade of the post-war, jurisprudence was occupied, above all, the problem of identifying Corporate-person with partners themselves. At issue was whether the debtors of sole proprietorships could offset their debts with their claims against the partner.

Any case denied the invocation of separation and the consequent asset autonomy (Corporate / partner) by virtue of having been violated the principle of good faith, thus recognizing the reciprocity of credits and debts. In its judgment of 03.07-53, the German Federal Court clarified more in detail the assumptions that, once assembled, allowed to admit that there is "an abuse of the formal legal position of Sociedad Unipersonal, as an autonomous Collective Person" and, therefore, also a violation in good faith.

In this judgment, the Federal Court takes into account the fact that the Company does not have any own social life "of the capital, which had been made available by the partner, have remained" affected certain purposes ", and the Company has been "an instrument" partner.

Although the judgment was circumscribed to cases where there was a close relationship between the reciprocal credit and the playing field of Sole Proprietorship and further that the decision is based, under dogmatic point of view, in paragraph 242 of the German Civil Code (BGB), there are similarities with the arguments of the "theory of special allocation of Heritage" returning to life with the doctrine. In fact, already in 1953, SCHILING tried to consider the Company for shares Unipessoal as having no legal personality, considering it as a mere heritage of the special affectation. However, this theory, of course, strongly challenged by several authors, be able to impose.

Also related to the problem of individual firms, was also discussed in this post-war period, the responsibility - on a "KeineHerrschaft ohne Haftung", which means "no responsibility without

accountability," would be a cornerstone of the market economy . It fell into a common place that still influences the discussion.

In summary, it can be stated that in the period that has elapsed between 1920 and 1955 were mainly the cases of Uni-personhood that focused the attention of the doctrine and jurisprudence, but was developing discussion in different directions and from different assumptions .

It was evident the lack of a systematic treatment of the matter, a crystallization point from which the discussion could do.

Understanding which led to construction of the disregard is that the societies do not exist by itself; result of expression of will of people, biologically designed, which are actually the working through of the Company. That deep down these people who act and not Societies as such because the societies are unable to act independently. Therefore the legal status of the Company should not be seen in absolute terms (in the sense of it being impassable).

However, it is a figure that although it has triggered more than a hundred years is not so far agreed in doctrine to the extent that some authors believe that their dogmatic construction is deficient (no concrete legal basis) and what you want to achieve with it (blame the members for the debts of the Company) may be the application of the general rules of law.

In fact, they are diffuse the rationale used for the application of piercing the corporate veil. For example: between COUTINHO DE ABREU, Menezes and PETER LAMB LAMB, leaning on the matter and adopting favorable position both your application - although converging on certain criteria that justify piercing the corporate veil - differ in systematic these assumptions.

To COUTINHO DE ABREU⁹the disregard can be applied to the extent that they are measured cases of attribution and liability cases. The cases of imputation are those that would be seen as the responsibility of society, but should, strictly speaking, be charged to the partner. Cases of responsibility are that the interpretation of the facts relating to these turn out to be the partner's

⁹Travel .., op. cit. pp. 179-187. COUTINHO DE ABREU study is considered the precursor of disregard of legal entity in the Portuguese Law, vol. FATIMA RIBEIRO, Guardianship ... ob. cit., p. 305. As opposed to this information, v. Menezes LAMB, The survey ... ob. cit, note 21 on p. 51, in which assigns the pioneering disregard the term Professor OLIVEIRA rise.

responsibility. Of all forms, according COUTINHO DE ABREU, these cases are assessed a teleological interpretation.

PETER LAMB¹⁰ Presents a heterogeneous list of situations leading to the disregard to know:

- a) Capitalization of a limited liability company by transferring the risk to the Company's creditors;
- b) Loan from shareholders to the limited liability company, so that in the event of insolvency, was flying in that creditors;
- c) Confusion, in fact, between the partner's assets and the Company, so that, in case of execution filed against the Company or against the member by the respective creditors, can always defend themselves based on asset separation;
- d) Trail partner to a non-compete clause, which affects through a company it controls;
- e) Voting by socio legally prevented from voting on a corporate decision, through another company it controls;
- f) Violation of restrictions on the distribution of social benefits to the partners (...) by expedients, making socio employee of the Company with a good salary, achievement by partner their advantage of ruinous expense to the Company;
- g) A foreclosed Company to acquire shares acquired its own indirectly through another company that is socia single or dominant;
- h) People of a certain nationality, prevented from exercising certain activity in a given country, are a company based in this country for this purpose.

In turn, Menezes LAMB¹¹ presents the following hypotheses justifications of disregard:

- the confusion of Legal spheres;
- thin capitalization;
- the attempt to third parties;
- abuse of the institute.

We could, as supporting factors of piercing the corporate personality of the company, provide the following assumptions:

¹⁰Disregard ob. cit., pp. 17 ff, who was presented the first monograph in Portugal on piercing the corporate veil, v. FATIMA RIBEIRO, Guardianship ... ob.cit., Pp. 305-306.

¹¹ *Of lifting...* ob. cit., p.155.

- Poor management of the Company. The partner deliberately runs over the rules of corporate governance of the Company, mixing personal and corporate assets, acting businesswoman, and personally in the same way, and because of this conduct delapidated the own assets of the Company and that achieved by credit to third parties;
- the legal personality of the company handling. The partner uses a variety of ways the legal status of the Company and the limited liability to deceive third parties;
- ineffectiveness of the Company but the partner. The company incorporated and with activities in declared course, actually do not practice; in its place is actually the partner, simulating the case from the Society, who practices them.

It is seen, therefore, that there is no rigid agenda of cases or cases leading to piercing the corporate veil, but an endless number of situations that can be engineered by the partner and justify the use of this resource for the call to personal liability for the debts of society. All of these situations and finished chances of showing, show that is the partner (person involved) the only protagonist of acts that aim, by limiting the liability of the Company, taking advantage to the detriment of third parties (creditors).

Unlike in the Legal Portuguese Order (as we have seen, receptive to the application of piercing the corporate veil) that uses different standards of its legal order, with particular reference to the abuse of rights under Article 340 of the Civil Code, Mozambique was bold predicting, literally, a provision based on piercing the corporate veil. It is Article 87 of the Commercial Code, which states: "It will be disregarded the legal status of the Company and accountable partners, when acting negligent or intentionally, in the following cases": -

- a) The Company is used as instrument of fraud and abuse of economic power;
- b) Occurring violation of basic rights of the consumer and the environment;
- c) In any case where legal personality is used aiming to harm the partner's interests, the Company worker, third, the state and the community where it operates the Company;
- d) In the event of bankruptcy of the same group of Societies Society, when defined in special legislation.

The great merit of this provision of the Commercial Code is to show that Mozambique is no stranger to the application of piercing the corporate veil. However, its content is not at all harmonious with the very doctrine of disregard, in that it shows strange hypotheses to it, particularly with regard to b) and d).

As the piercing the corporate veil a means found to protection of corporate creditors - and it is in this perspective that the whole theory is oriented construction - cost understand why the Mozambican Legislator included in the range of application of the reasons for the slight violation of law issues of consumer and the Environment.

It also seeks to list the situations leading to the disregard, and at the same time, yields to be open to other cases in accordance with paragraph c).

Article disregarding provided for in Mozambican Commercial Code, it is not successful in other articles that complement in order to translate their legal status and / or figure application mode.

A list merely enunciation of the justifications situations of disregard, especially the regularly suggested by the doctrine, could have been more effective if the will of the legislator was to establish even that, normatively, a legal framework of piercing the corporate veil. But recourse to the legal order as a whole, and the abuse of rights under Article 340 of the Civil Code would be producentes, and give more space to repel harmful behavior of certain partners.

If you can not question the usefulness of piercing the corporate veil as an important protection tool of the interests of creditors of the Corporation and its effect in Mozambique, the same can not be said about the need of the disregard of the Company to achieve the desideratum hereof.

Thus, it is necessary to ask: But is it the legal personality of the Company which should be disregarded? Apparently not. After all, the problem is not placed in the society concerned due to its legal personality, but because of the principle of separation of assets by limited liability.

The legal personality of the Company is making it legal person actually achieved at the time of its incorporation as states Article 86 of the Commercial Code which says, verbatim, that "Commercial Companies acquire legal personality from the date of the respective articles of incorporation" .

The assets of the Company (except the capital) is not part of the elements necessary for incorporation of the Company in accordance with Article 92 of the Commercial Code. So there is no need to disregard the legal personality of the Commercial Company once outside the required content attribution of legal personality Corporation.

If the Corporation shares the principle of separation of assets, limited liability basis, in Article 286 of the Commercial Code which states that "Only the social heritage responds to creditors for the debts of the company ...".

Thus, it is this principle that should be overridden to allow the veil separating the equity is raised, not piercing the corporate veil in itself¹².

The piercing the corporate veil or derogation from the principle of equity separation should be required in court, leaving the judge to verify the existence of the conditions for admission of the application. However, an important question to ask in disregard of the seat (if that is the way forward) is to know what is the legal position of the Company after disregarded its legal personality. It is extinct, or is after the payment of debts (re) considered the legal personality of the company? If it is, how do you proceed? The Judge, ex officio, restores the legal status of the Company or stakeholders (partners) is that they must apply for restoration of legal personality sometimes disregarded?

It is also for these issues that we believe that the solution to the reasons for the disregard of the Company's legal personality is the derogation of the principle of limited liability, and not

¹²V. In the same sense, and in the near direction, PUPO BELT, Right ... ob cit., P. 203, and COUTINHO DE ABREU, Course ... ob.cit., P. 187. In contrast, applauding the disregard of legal personality in itself, v. PETER LAMB, The Disregard ... ob. cit., p. 19.

disregard the legal personality of the Company. Only the beginning, and once solved the problem, ie, reached the personal assets of a partner who abused the principle of separation of the assets of the Company, to thereby take personal advantage, the life of the company continues normally without the need the practice of any other legal-judicial act.

Whatever aspect of the Company to be disregarded or overridden¹³ so that the member of the Company for shares is personally liable for the debts of the Company, it is unquestionable that the limited liability corporation shares is likely to be ignored or undermined.

5. Which way is to tread the right of Commercial Companies with the possibility of (dis) limitation of liability?

If it is increasingly concerning the legal status of the People Collective, especially in the Companies (contrary to the traditional positivist conceptions of law that absolutizavam) is therefore, as we have seen, can their disregard to safeguard interests of third parties (company creditors) will cease to be different exercise business activity in individual name and / or through an entity, legally autonomous (Trading Company), since, in the event of the exercise of business activity in his own name, unlimited liability is natural and in the case of the exercise of that activity by an autonomous entity to be unlimited liability potential.

But it is healthy so be it, so that the Companies are not used as a shield of the respective partners in the field of the 3rd party liability (creditors). It is necessary for anyone who decides to embrace the business life to know that there are risks inherent in that activity, and these risks must be their own responsibility and not to third parties.

In a society in which we witness a huge rush to get rich that is, without constraints, it is difficult to know at the outset what the true intentions of those who predisposes is a Trading Company. Thus, piercing the corporate veil is an effective means of refreio evil purposes of who is a Commercial Society for her help themselves in order to achieve economic objectives exclusively personal.

However, at the same time evolving field of acceptance and application of piercing the corporate veil of Commercial Companies, it weakens the foundations of Liability Companies Limited. Thus, there is a new course that is trodden be the Commercial Companies, and this is the devaluation or termination of limited liability.

If there is a potential possibility that, through the application of piercing the corporate veil of the Commercial Companies get up the veil of limited liability, the same is no longer a perentório principle, in that it applies as long as no situations arise that jeopardize. Therefore, there is, in practice, assignable difference from a practical point of view between Liability Companies and Limited Liability Companies Limited Commercial.

Once declining the principle of limited liability, which will then be the means of defense Heritage staff of the partners cover the exercise of business activity through a commercial company? We think, therefore, the following:

- Observance of the principle of good faith;
- Respect for Legal Standards in general and especially relating to the life of the Commercial Company;
- Compliance with Standards Contractual;
- Compliance with Corporate Governance Standards.

With these principles, there will be less likelihood of third party rights are violated and, by consequence, called the partner to respond with personal property for the debts of the Company. We understand that the limited liability of Companies is to stop being a principle that stems from Cool Corporate Law stipulation but the conduct of the member itself, in response to the own risks of business activity and the third credit.

One can easily understand that human behavior (the partner) is what constitutes the real limiting or not limiting factor the responsibility of Commercial Company and any Company. If we look at the situation Corporate Responsibility Trade (i) limited, as well as for the companies in individual name, although for the development of their activities borrowers to third parties, still remain over many years without ever being execution object for debt. It is thus understandable that the factor "human conduct" what else determines not the Normative stipulations.

BIBLIOGRAPHY

ABREU of Jorge Coutinho, - Commercial Law Course, Vol II, Of Companies, Coimbra, 4th ed, Almedina, 2011.

ABREU of Jorge Coutinho, - *Of entrepreneurship (the Companies Law)* Almedina, Florida, 1996.

ABREU of Jorge Coutinho, - *Dialogues with the Court, II - Responsibilities of Directors towards the company creditors and piercing the corporate veil*, Company Law in Review (DSR), Almedina, Coimbra, 2010, pp. 49-64

ABREU of Jorge Coutinho, - Law Abuse - Testing of a criterion in civil law and in corporate decisions, Almedina, Coimbra, 1983 (reimp.1999,2006)

ANTUNES, José Engracia - Groups of Companies and legal structure of the Organization plurissocietária Company, 2nd ed, Revised and updated, Almedina, Coimbra, 2002..

ANTUNES, A.Filipa Morais - "Abuse of collective legal personality in the Commercial Company Law" in AAVV, New trends in civil liability, Almedina, Coimbra, 2007..

RISE, José Oliveira - Commercial Law, Commercial Companies vol.IV-, Lisbon, 1993.

RISE, José Oliveira - Direito Commercial, Vol. IV - Companies. General Part, Lisbon 2000.

ALMEIDA, Pereira, Companies and Securities, 5th ed., Coimbra Editora, Coimbra, 2008.

Bilberry Wheel, Carmen - "levantamiento del velo y persona legal en el Derecho private Spanish," Aranzadi, Pamplona, 1996.

CASTRO, Frederico y Bravo - La legal persona, 2nd ed, Civitas, Madrid, 1984..

CODE Of Commercial Companies in Comment, Note to Article 5, AAVV (coord.de Coutinho de Abreu), Almedina, Coimbra, 2010.

CORREIA, Brito -. Commercial Law, vol 2, Academic Association of the Faculty of Law, Lisbon, 1989, p.244.

DOBSON, Juan M. - El abuse her legal-en el derecho private personality. Buenos Aires, Depalma 1991.

RABBIT, Pinto - Commercial Law Lessons. Mercantile obligations in particular (Corporate Commercial), author's edition, Lisbon, 1966.

LAMB, Pedro - The piercing the corporate veil of Commercial Companies, AAFDL, Lisbon, 1989.

LAMB, António Menezes - The lifting of the Collective Personality in Civil and Commercial Law. Coimbra: Almedina, 2000.

LAMB, António Menezes - Manual of Company Law, I- Of Societies in general, Almedina, Coimbra, 2004.

CORREIA, Ferrer - "The Society for Responsibility quotas limited according to CSC," in matters of Commercial Law and Private International Law, Almedina, Coimbra, 1989.

CORREIA, Ferrer - Commercial Law Lessons, II, John Abrantes, Coimbra, 1968.

CORREIA, Brito, Comercial.2º Law vol., Companies, AAFDL, Lisbon, 1989.

BELT, M.Pupo - Commercial-Law Company Law, 11th ed, (c / colab of AJTomás / O.Castelo Paulo.) Ediforum, Lisbon, 2009: 12th ed.. 2011.

COSTA, Ricardo - "To ignore or not ignore: that is the question," GOOD N.30 (2004), pp.10-14

COSTA, Ricardo - A Company by Quotas Unipessoal in Portuguese law, Almedina, Coimbra, 2002.

DUARTE, Diogo Pereira - Aspects of lifting the collective personality in the Corporation in a controlling relationship, Almedina, Coimbra, 2007.

Cunha, Paulo Olavo - Commercial Company Law, 2nd ed, Almedina, Coimbra., 2006; 3rd ed., 2007.

FURTADO, J. Pinto - Commentary on the Commercial Companies Code (Articles 1 to 19), Almedina, Coimbra, 2009.

RIBEIRO, Maria Fatima - The protection of the Company's creditors shares and "piercing the corporate veil", Almedina Coimbra, 2009.

RODA, Bilberry, - "levantamiento del velo y legal persona en el derecho Spanish private" Aranzadi, Pamplona, 1996.

Koury, Suzy Elizabeth Cavalcante. - The piercing the corporate veil (disregard doctrine) and groups of companies, 2nd ed, Rio de Janeiro: Forensic., 1998.

Koury, Suzy Elizabeth Cavalcante. - The piercing the corporate veil (disregard doctrine) and enterprise groups. Rio de Janeiro: Forensic, 2000.

MOTA, A. Mota - The Supply Agreement - Financing of the Society of Equity and Capital Oblivious, Almedina, Coimbra, 2002.

MARTINS, Alexandre Soveral, - "The personality and legal capacity of Companies" in AAVV (coord.de Coutinho de Abreu), Law Studies of Societies, 10th ed, Almedina, Coimbra, 2010..

OLIVEIRA, José Lamartine Correia - The double crisis of legal personality. São Paulo: Saraiva, 1979.

PAZ-AIRES, Candido, - Las Mercantiles Corporation, in Lecciones Commercial Derecho, 10th lesson AAVV, (Director Aurelio Mendez), 2nd ed, 1 -. Homson Civitas, Madrid, 2004.

PINTO, Carlos Alberto da Mota, coll. Monteiro António Pinto and Paulo Pinto Mota - General Theory of Civil Law, 4th ed, reprint, Coimbra Editora, Coimbra.2012..

SIT-SEE-Jairo - Disregard of legal personality in Journal of Master in Economics from the Federal University of Bahia law. Salvador UFBA, vol. 4 (July 1993 to December 1995).

SERICK, Rolf. - Apariencia reality y en las societies Mercantiles: el derecho abuse by means of her legal persona. Barcelona: Ediciones Ariel, 1958.

SERRANO Gonzalez Murillo, José Luis Merino y Jara, Isac - "Levantamiento del velo" y fiscal offense (al hilo de la STS, 2nd room of 20 Mayo 1996), News Juridica Aranzadi, año VI, núm.264, pp.1-6.

TAVARES, Joseph, - Corporate and Commercial Business, 2nd ed, Coimbra Editora, Coimbra, 1924..

Vasconcelos, P. Parent, - Social participation in the Company Law, 2nd ed, Almedina, Coimbra, 2006..

Vasconcelos, P. Parent, - Teoria General of Civil Law, 2nd ed., Almedina, Coimbra, 2003.