Piercing the Corporate Veil through the Mexican Courts
LEGAL STRATEGIES FOR DEBT RECOVERY OUT OF FRAUD DERIVED FROM THE ABUSE OF THE LEGAL ENTITY

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Www.hmhlegal.com (updated August 15, 2013)

Summary: What relief do creditors have when shareholders or parent entities divert funds of their controlled companies for personal use? Many countries provide specific legal or equitable remedies that allow directing liability to the controlling party, in cases of fraud. This is known as “piercing the corporate veil”, and it is a remedy that has found no specific recognition under Mexican law. Therefore, the following article will discuss the problems associated with trying to pierce the corporate veil in Mexico through available remedies, and will make suggestions as to alternative options for legal redress.

INTRODUCTION

Problems related to the abuse of the legal entity are common in Mexico. The biggest concern is that the Mexican legal system has not yet specifically addressed these issues and, therefore, no specific remedy in law (either out of substantive law, procedure law, or case law) exists which allows a party to effectively recover from a loss resulting from an abuse of the legal entity. Thus, any strategy and legal action to that effect will generally have to consider the use of general legal institutions designed to sanction civil fraud such as action pauliana, simulation, nullity, as well as general civil liability.

The following article will try to point out and analyze the problems associated with the abuse of the legal entity in Mexico as a form of fraud. It will also examine the traditional institutions of law available to fight any form of civil fraud or general abuse, and the impracticalities and constraints of exercising civil actions based on any such legal institutions for the recovery of debt. Additionally, we will try to point out and support alternative options for legal action as a remedy for debt recovery, or for punishment against debtors who have willingly incurred in these fraudulent conducts.

ABUSE AND DISREGARD OF THE LEGAL ENTITY

One of the main privileges of the legal entity is the limited liability that is afforded to shareholders or investors who are only responsible for paying the subscribed shares, and are not responsible for any of the company’s obligations. This privilege of limited liability derived from the corporate entity can only be disregarded within situations that generally involve fraud, by abusive control of such entity by any of its members or interested parties.

The abuse of the legal entity generally takes place when one or more of the shareholders or a controlling company uses the controlled entity as an alter ego or puppet instrument to conduct personal business wrongfully.
and illegally, or to defraud third parties. In both instances, it is for their personal benefit and in detriment of their controlled company, which is considered a puppet or dummy corporation.

Many countries have already identified and addressed these problems of abuse and, consequently, have provided specific remedies that are known as the *disregard of the legal entity* or the *piercing of the corporate veil*. Most of these remedies will tend to hold a shareholder or any other controlling party liable for the debts of the corporation that was controlled and abused, doing so effectively without bringing any judgment as to the validity or nullity of the corporate form, or the charter of incorporation.

This kind of fraud can take place in different forms, but factors to be considered by the courts for piercing the corporate veil, especially in the USA, include the following:

- Significant undercapitalization of the business entity
- Failure to observe corporate formalities in terms of behavior and documentation
- Intermingling of assets of the corporation and of the shareholder
- Treatment by an individual of the assets of corporation as his own
- Siphoning of corporate funds by the dominant shareholder
- Non-functioning corporate officers and/or directors
- Concealment or misrepresentation of members
- Absence or inaccuracy of corporate records
- The corporation being used as a “façade”, “puppet” or “alter ego” for dominant shareholder personal dealings
- Failure to maintain arm’s length relationships with related entities
- Manipulation of assets or liabilities to concentrate the assets or liabilities

In the case of a seller-buyer setting (creditor-debtor relationship), an abuse of the legal entity by the debtor-buyer can also take place in many forms. A shareholder or a controlling party of a corporation (either a director, president, or a parent company) can use such corporate vehicle to obtain goods or credit for their own personal interest without exposing themselves. In a situation like this, the controlled company will usually work heavily undercapitalized due to that lack of independent decision-making from the controlling party who does not act in the best economic interest of the company. This total lack of economic interest is exposed when goods obtained from the abused company are siphoned or transferred to other “clean” companies or operations from the controlling party. It is also exposed when the assets of several companies (part of a controlled group) are mixed and commingled to a point where it is impossible to identify and set apart the current assets of the abused and responsible company, to the point that such assets do not appear in their balance sheet. This transfer or commingling of assets will usually take place without any financial consideration to the controlled company, keeping it heavily undercapitalized and maintaining all attention from creditors away from the real parties of interest who wrongfully acquired such goods or funds through an abuse of the legally exposed company.

In situations as these, statutory or case law in many countries will address the problem specifically by allowing the courts to disregard the legal form of the abused company (thus, *piercing the corporate veil*) and
holding the controlling and real party liable for the debts incurred by the abused company. In these cases, the abused company is considered an Alter Ego of the controlling party.

In some jurisdictions (except in Mexico), in different degrees and forms, usually out of findings through pre-trial discovery, procedure law will allow a plaintiff to amend its complaint or actions during the course of the proceedings to include newly identified parties (either controlling or wrongfully benefited parties) and, thus, redirect their actions before trial. Also, many times during the course of a case, and specifically as it pertains to the seizure of assets, attachment or execution, courts may disregard a newly formed company which is being used to hide or protect assets of the exposed and controlled parties, thus allowing an attachment of those transferred or commingled assets. These specific remedies in these jurisdictions are adequate and effective because they allow immediate action and protection against fraudulent schemes during the course of a case, and even afterwards following execution. Thus, it is usually unnecessary to file further actions in addition to the main collection case in order to fight fraudulent schemes based on corporate abuse.

**ABSENCE OF ALTER EGO DOCTRINE IN MEXICO**

In Mexico, these cases of abuse and the problems they present are also common and well identified. But despite this, there is no federal or state body of law (either substantive or procedural), or case law, that specifically addresses these problems and consequently, allows courts for an effective and immediate remedy or measure for disregarding the corporate entity in order to reach and hold liable the real “substantial” parties.

The General Corporations Act (“Ley General de Sociedades Mercantiles”), which governs all commercial corporations throughout Mexico, recognizes “legal personality” to all corporations that properly follow the process of incorporation according to the Corporations Act. From that moment on, when their charter is registered at a public registry, it is deemed that the company will be considered as a “legal person” and, therefore, all obligations incurred, or rights or benefits gained by the company, will be attributed to the company only, and not to the shareholders. The Corporations Act provides that this legal personality will always prevail and stand unless the corporate form is sanctioned and ruled null (by a court with proper jurisdiction and after due process of law), only for causes associated with either having an illegal corporate purpose, or when the corporation habitually commits illegal acts. In these situations, the Corporations Act provides that the ruling of nullity will force the corporation into a liquidation process; however, it does not provide for any direct and personal liability of the shareholders (or any other controlling party) for the company’s debts. In essence, this does not constitute a disregard of the legal entity as no liability is imposed to the real or substantial parties that might have abused the corporate entity in order to commit fraud.

The consequence of these rules, as well as the absence of any other specific provision or body of law that allows disregarding the legal entity under situations of abuse or fraud, is that victims or grieved parties are forced to direct a separate action through another formal proceeding. Here, due process of law will have to be afforded to the abused corporation and all pertaining shareholders and parties, which sometimes even includes the Notary Public who issued the incorporation deed. This process will be necessary every time victims intend to pursue a claim against a controlling party for any such acts performed or for results achieved through the abuse of the legal entity, either a tort or a liability action for these wrongful and illegal acts of abuse. In other words, injured parties are preempted from directing any legal actions against shareholders for acts apparently executed by, and legally
attributed to the controlled corporation, unless there is a formal ruling or judgment by the court that confirms that the corporation is deemed null and void for all pertinent legal effects. This again, after a formal proceeding or case is filed where due process of law is afforded to all parties.

INSTITUTIONS OF CIVIL-ROMAN LAW AS A REMEDY FOR CIVIL FRAUD IN MEXICO

The first action that comes to mind that addresses civil fraud in general fashion is the nullity action. The nullity action in a broad sense is afforded to any grieved or injured party against any legal act (including a charter of incorporation and the corporation itself) that has been executed violating laws that are prohibitive in nature, or that are against public policy (public order). As indicated, the sanction of nullity will also be granted against legal entities for having a corporate purpose that is illegal, or when the corporation routinely commits illegal acts. In this sense, any abuse of the legal entity is considered an illegal act that can result in the nullity of the corporation, with full liability of the controlling parties if a relationship exists between the damages caused and the wrongful acts of abuse. This, provided that a cause of action for civil liability is supported, and also directed to such parties that controlled the corporate entity, parallel to the nullity action.

The second action that is available as a relief for the abuse of the legal entity is the one for simulation of legal acts, which has its roots, and in essence represents a second type of nullity action. An act of simulation indicates the concert or agreement of two or more persons to give a specific thing the appearance of another, generally for the purpose of fraud. Simulated acts, once proved according to Mexican law, are considered null and will be declared void. The Federal Civil Code for Mexico provides that once a simulated act is declared null through a formal proceeding under due process of law, all things and rights will be restituted (restored) to its owner, along with its products and interest, should that be the case. Principles of the simulation institution can and will usually be used in support of a main nullity action.

Simulation can be argued where the corporation is considered only an instrument or puppet to perform the wrongful acts of the shareholders or a controlling party. While this type of action might get a plaintiff closer to the effects of piercing the corporate veil, it cannot be considered an effective remedy to be used during the course of a case that is concerned with different actions and restricted to the ruling of those specific issues. These can be personal actions for payment of monetary obligations or contract enforcement, which are usually exercised during a collection case. The nullity action must be an end in itself, and thus, requires a formal case and a cause of action that preserves due process of law for all parties that will be affected by the judgment. In a case like this of abuse of the legal entity, all shareholders of the corporation will have to be called (most of the time even the Notary Public that formalized the deed of incorporation), and afforded service of process with the opportunity to argue and offer evidence in support of their case.

The third available remedy is known as actio pauliana (acción pauliana). Although this is a legal action designed to prevent a fraudulent conveyance of assets, it can be used to cure or prevent some effects or purposes of the abuse of the corporate entity. The Mexican Federal Civil Code provides that all acts executed by a debtor in detriment of its creditor can be invalidated at the request of such creditor, if an insolvency of the debtor arises as a result of such acts. Third parties are not exempted from this sanction when they are considered to have acted in bad faith, that is, when they essentially knew or should have known that the conveyance of assets would cause harm to the creditor. The evidence for proving bad faith will be heavily based on presumptions, as authorized by
law (through circumstantial evidence), which most of the time will dictate if the action pauliana will stand in court or not.

Under this scenario, the alter ego doctrine may be considered to be applied to restore and keep within reach of the creditor those specific assets of a company that are illegally transferred to another that is claimed to be an independent third party, but is eventually proved to be controlled as well. There are several prerequisites for this action to be sustained in court, but the most important one is that the specific act or contract of transfer or conveyance and the conveyed assets have to be clearly identified (along with its source and the parties involved), before the legal action is filed. (It is also important to keep in mind that a complaint filed at a Mexican court cannot be amended after the defendant submits a response). This is something that always proves to be hard because of the strict rules of evidence of civil procedure in Mexico that does not recognize pre-trial discovery or subpoena for documents (subpoena duces tecum) before a response is submitted. This inflexible requirement is a result of the principles of civil procedure from a civil law tradition that require parties to plead with particularity at the initial postulation stage (with the initial complaint), requiring to specify the particulars of the cause of action to allow the defendant a proper defense under due process of law.

**IMPRACTICALITIES OF PURSUING A CIVIL ACTION FOR ABUSE OF LEGAL ENTITY**

The remedies afforded by these general institutions derived from civil-roman law, based on the general legal system prevailing in Mexico, are inadequate, impractical, and ineffective to deal with and solve problems resulting from an abuse of the legal entity, especially when there is clear intent to commit fraud against third parties through this scheme. In other words, a civil case as the ordinary remedy to address these problems will be inadequate and ineffective most of the times.

For example, in the general debt collection case through the ordinary civil action (through a civil case), the objective of the plaintiff-creditor will always be to reach assets of the debtor upon which he can execute to repay the debt. In a case of fraud by abuse of the legal entity, the objective will change dramatically. Here, the plaintiff will try to find assets that are in possession of the debtor’s controlled and abused companies, or will try to direct a different action to identify and hold liable the specific party who wrongfully benefited from the fraudulent scheme. This will be the solvent and prosperous current owner and holder of the assets and products gained through the puppet corporation, his alter ego. In this latter case, the proper action will probably be the simulation or the nullity action (maybe both), and in the first case the proper one will be the actio pauliana.

The challenges in reaching the objectives of collecting through these actions, which in the end make them ineffective and inadequate, are totally practical. Because of the rigid nature of the traditional civil case in Mexico, an action that is brought against a party cannot be amended after the defendant’s response. Thus, while a plaintiff might be struggling in a simulation case to hold liable a “third” party (shareholder or controlling parent company) who is considered the real party of interest, such party can easily transfer or conceal his assets during the course of such case. Here, the plaintiff would be preempted to redirect his action or execution in that same case against the new assignee or buyer. And because this type of case (for nullity or for simulation) does not afford a pre-judgment attachment order during the course of the case, the defendant can freely transfer, conceal or protect his assets through different schemes that will make it impossible for a plaintiff to track them down. But even at times when such assets have been tracked down, a good-faith buyer will not be responsible for such fraudulent transfer on the
part of the seller, and therefore, plaintiff will be left with the task of tracking down the product of such sale, that is, the money, which will be easily concealed and protected by the debtor. Thus, by the time the plaintiff is awarded a judgment that orders his defendant to pay, the defendant might have already positioned himself in a situation of apparent insolvency, making it impossible for the plaintiff to satisfy his payment by failing to identify assets which he can execute upon.

The same practical reasons prove the *actio puliana* to be ineffective. Unless we consider real estate assets that are easily identifiable (where ownership is made known to the general public through the public registry), movable assets can be easily concealed or commingled with other related or controlled companies, preventing the creditor from knowing the source documents of ownership, as well as the parties at which to direct his action. As stated, this is the result of rigid civil procedure rules that do not allow the subpoena for documents (*subpoena ducis tecum*) before the formal action is filed (and considering the need to plead with particularity), as part of the pre-trial discovery that is not provided for in the Mexican legal system. Furthermore, even if sources of ownership are known and an action is effectively followed, a defendant will be capable of continuing its fraudulent acts of sale or conveyance throughout the course of the case; thus, making it impossible to restore movable assets that were transferred to good faith or ordinary course buyers, should the plaintiff’s action prevail.

The availability of fraud schemes from abuse of the legal entity are endless, each unique, and every time the remedies stated above will appear inadequate and ineffective for a definite and immediate solution because of the prevailing legal system in Mexico. The legal process is heavily based on due process of law rules derived from our General Constitution, established as fundamental human rights. These rules basically prohibit authorities from molesting any citizen by levying on his property or his rights without due process of law before a court. That is why every time different entities or individuals are used to conceal assets, each and every one of them will have to be called as a party to a cause of action and subject to a formal process before their assets can be seized and executed upon. The strict *legality* and *security* principle (*principio de legalidad y seguridad jurídica*), as a fundamental human right, forbids any judge from redirecting an action or execution against any third party, if he was not named and called as a defendant in that case, even if there are justified reasons of justice or equity.

That is why it proves very difficult to reach assets of debtors through traditional civil actions in Mexico. In addition, shareholders of Mexican corporations will find favorable conditions for these fraudulent schemes. This is because the General Corporations Act provides no sanctions for failing to keep corporate records or to make them public, or for failing to liquidate a company when it ceases business operations. These and other legal deficiencies allow corporations to work with groups of companies to commingle assets and legally expose only a company that is heavily undercapitalized and most of times incorporated for that sole purpose. The easiness of closing down an operation of a corporation, and to incorporate new legal entities to transfer operations and assets from the closed company under “total concealment” is the perfect environment for these acts of abuse to take place.

**ALTERNATIVE STRATEGIES FOR PUNISHING CONDUCTS OF ABUSE OF THE LEGAL ENTITY**

Because of the above problems and challenges, many times a civil course of action will be inadequate, and the only option left for relief will be through a criminal action, if the conduct of the debtor constitutes a crime, as provided under the state or federal criminal codes applicable to such situations or conduct. While some crimes will only concentrate on punishing the illegal conduct of those responsible (especially those from bankruptcy or
insolvency proceedings law), other crimes might afford a relief to the injured parties by allowing a restitutionary incidental action for damages within the same criminal case. Whether a specific monetary relief is available, or just the prison sanction for the illegal conduct, my opinion is that a criminal course of action is the best alternative strategy to an ineffective civil action in Mexico which fails to resolve and prevent problems derived from the abuse of the legal entity.

However, general allegations of abuse of the legal or corporate entity will not be sufficient to establish the actualization of a crime. There is no criminal code in Mexico (either federal or from a state) that has regulated the corporate abuse as a crime per se. To know if a conduct of abuse of the corporation will constitute a crime, a thorough analysis will be required on a case-by-case basis, in which all the specific acts, events, and conducts that contributed to the abuse will have to be examined and compared to conducts provided in other crimes. These are the conducts provided for under the penal codes for generic or specific fraud, or for illegal business administration or accounting, as provided under the Insolvency Proceedings Act in Mexico (Ley de Concursos Mercantiles). Again, Mexican counsel will examine this on a case-by-case basis to make any conclusion as to the actualization of a specific crime, and consequently, to provide recommendations as to the best strategy to follow.

Another possible option is the right to report all pertaining facts to a federal or state prosecutor through a formal accusation petition, without making any conclusions or allegations as to the actualization of a specific crime or the probable responsible parties. In this last scenario, an investigation of the events is legally required for the prosecutor, who will be the only one responsible for reaching conclusions and making allegations and charges as to the actualization of a specific crime and the probable responsible parties. Full responsibility of those pointed out as probable responsible will have to be proved during the course of the criminal case (in the instruction period of that case, during trial), after formal prosecution by the prosecutor.

Again, as the sphere of application of a corporate abuse strategy is quite large, the possibility of incurring in different crimes will be present, but most of these conducts will probably be found within the specific chapters of the penal codes related to the crimes of fraud. Among the usual crimes that fit the abuse conduct, or such other acts that contribute to the abuse, are the following (according to the Federal Penal Code, as applicable to federal crimes, which most states have adopted for their penal codes):

1. **GENERIC FRAUD.** Article 386 provides that fraud will be committed when someone, deceiving another or taking advantage of the error in which he stands, illegally takes a thing or reaches a wrongful profit. The sanction for this crime is prison from 3 to 12 years when the fraud amount exceeds 500 salaries in Mexico, which roughly equals $2,550 USD.

2. **SPECIFIC FRAUD FOR ENDORSEMENT OF DOCUMENTS.** Fraction III of article 387 provides that the same sanctions for fraud will be imposed to anyone who obtains a certain amount of money or any other gain or earning, through the issuance or endorsement of a title document against an “apparent” person, or someone else who the issuer knows that will not pay.

3. **SPECIFIC FRAUD FOR SIMULATION.** Fraction X of article 387 provides that the same sanctions for fraud will be imposed to those who simulate a contract, an act, or a judicial petition with injury to another, or to obtain any wrongful benefit.

4. **SPECIFIC FRAUD FOR TRANSFER OR SALE OF A COMMERCIAL ESTABLISHMENT (COMMINGLING OF ASSETS BETWEEN COMPANIES).** Fraction XIV of article 387 provides that the same sanctions for fraud will be
imposed to those who sell or transfer a negotiation without authorization from its creditors, or without any guarantee of payment of those credits by the assignee, as long as those credits are unpaid and owed. Furthermore, when the transfer is made by a corporation, the responsible parties will be those individuals that authorized such transfer, as well as the principals, administrators or representatives who execute it.

5. SPECIFIC FRAUD FOR INTENTIONAL INSOLVENCY. Article 388 bis provides that a prison sanction ranging from 6 months to 4 years will apply to those who [intentionally] put themselves in a state of insolvency for the [sole] purpose of avoiding its creditors. In the case of bankruptcy, the conduct will be sanctioned according to that respective body of law (either the Bankruptcy Law or the Insolvency Proceedings Act).

Additionally, there are two specific crimes provided under the Insolvency Proceedings Act that can apply to situations of undercapitalized and insolvent companies. Although such crimes will only appear during the course of an insolvency proceeding, it is important to keep in mind that much of the cases of insolvent or undercapitalized companies can be reported to the prosecutor, who can in turn request the insolvency proceeding before a court, if all legal conditions and prerequisites are met. The specific crimes set forth by the Insolvency Proceedings Act are the following:

6. AGGRAVATED INSOLVENCY BY INTENTIONAL ACTS. Article 271 provides that the businessman formally declared in a state of insolvency (concurso mercantil) through a final judgment, will be sanctioned with prison of 1 to 9 years for any intentional act or conduct that causes or aggravates the generalized default in the performance of obligations. Unless proof to the contrary is presented, it will be presumed that the businessman has caused or aggravated intentionally the generalized default in the performance of its obligations, when his accounting documentation does not meet the proper formalities necessary to allow uncovering its real financial situation, or when it is altered, forged, or destroyed.

7. FAILURE OF EXHIBITING REQUESTED DOCUMENTS. Article 272 provides prison sanction of 1 to 3 years, when during insolvency proceedings, the insolvent businessman refrains from providing or exhibiting his accounting books within the term granted by the court and after a formal request is made. An exception is made only if the insolvent businessman proves that it was impossible to present such documents for causes beyond his control, or force majeure.

The previous cited conducts of crime many times present themselves in cases of fraud involving an abuse of the corporate entity. The typical situation is the wrongful and illegal transfer of a commercial establishment and assets by a person (either an individual or a corporation), without the consent of its creditors and without the new owner agreeing to guarantee payment of the debts. This conduct will usually take place in a location or premises where several related and controlled companies operate, or appear to do business independently but at the same time. Usually there is heavy undercapitalization of the debtor company, and heavy commingling of assets, which of course, is why a transfer of assets seems proper to the legally unexposed corporation. Thus, allegations as to the only business left alive and operating at such premises suddenly appear, denying existence or operation of any other company, especially the exposed debtor corporation. This scheme is nothing more than the actualization of the crime of fraud provided for under section XIV of article 387. Thus, a report to the corresponding prosecuting authorities is key for obtaining monetary relief. Under this criminal course of action, an opportunity to request the restitution for damages sustained by the responsible parties is possible, which makes this a good alternative relief from the civil action.
An example for criminal liability under the Insolvency Proceedings Act (crimes 6 and 7 pointed out above) lies under this same scenario. Usually when groups of companies are involved and heavy commingling of assets is clear, the probabilities that the exposed, abused, and undercapitalized company will have proper accounting books and will meet its taxing obligations will be slim. One option will be for the creditor to report the state of insolvency through a formal complaint, which will have some significant cost, as well as burdens of proof. Another option is to request the petition of insolvency to the prosecutor, if he discovers such apparent state of insolvency during any criminal investigation followed for other crimes, as pointed out above. Under this option, the prosecutor will have to formally petition and begin an insolvency proceeding for such purposes, therefore avoiding the cost and burden of acting as plaintiff of the insolvency proceeding. During these proceedings and under the prevailing conditions, probabilities will be high that the exposed debtor company and its representatives will be liable for any of the two crimes provided for under articles 271 and 272 explained above. Although under these criminal actions there will be no opportunity for monetary relief to the creditor for damages, at least the illegal conduct will be prosecuted and may be punished, with a potential prison time of up to 9 years.

EXTENT OF INVOLVEMENT AND RISKS RELATED TO CRIMINAL INVESTIGATIONS

The extent of the plaintiff’s involvement during the criminal investigations will be limited to the reporting of “facts” to the prosecutor through a formal criminal accusation, without any findings, conclusions, or allegations as to the actualization of a specific crime, and without any direct identification of responsible parties. Facts alone, however, may clearly tell or expose conducts that are identified as the indicated crimes. As mandatory by law, the prosecutor is obligated and responsible for opening an investigation, finding and securing additional evidence such as witnesses or documents, and coming up with conclusions as to the actualization of any specific crime with the full identification and formal prosecution of the probable responsible individuals.

Under these conditions, and provided that careful and “objective” reporting of facts are provided to the prosecutor during the formal accusation, there is no risk or legal exposure to the creditor as the only responsible party for the criminal action will be the prosecutor alone. In fact, it is provide for under our General Constitution that the prosecutor will have exclusive control or monopoly of the criminal action in all cases and situations; thus, confirming that no exposure or risk can be attributed to any private party that reports or makes accusation of facts to the authorities.

It is important to consider that the risks threatening success during a criminal action, as opposed to a civil action, are much higher. During a criminal action an injured party has no control of the case for the main reason that the outcome will generally be a result of the prosecutor’s performance in that particular case, according to the evidence presented and the allegations and charges made. Although injured parties are authorized to submit evidence to court in support of the prosecutor’s case, it is ultimately up to the prosecutor to pursue his criminal action, and to defend it against defensive allegations from the accused parties.

CONCLUSIONS

Problems of abuse of the corporate entity present themselves heavily under different business settings in Mexico. The major problem of this specific type of fraud is that in Mexico, no specific remedy in civil law exists that adequately and effectively provides relief to those injured or defrauded by these illegal practices. Some institutions
derived from the civil-roman law tradition such as *simulation*, *actio pauliana*, and *nullity* actions may provide some relief. This however, may work only theoretically. In reality, a creditor-plaintiff may find himself not reaching any effective result for impractical reasons, for the legal system affords debtors many ways of protecting their assets and keeping themselves out of reach from creditors.

Absent an adequate remedy in civil law, and therefore, proving difficult to bring a strong and effective civil action against a party that has abused the corporate form, a creditor must look for alternative ways for effective relief. One such way of doing so will be by exploring the specific acts of abuse to determine if these are considered crimes in the specific jurisdiction or state where the events took place, or where such legal effects were produced. In considering this option of criminal action, it will be sufficient to report all related facts to the state prosecutor through a criminal accusation, who will in turn be responsible for doing a full investigation, gathering evidence and formally charging and prosecuting any responsible parties, should he conclude that the reported facts constitute a crime. The wrongful practice of abuse of the corporate entity will generally fit the specific crimes of general fraud and specific fraud, as provided under the Federal Penal Code as well as many of the state penal codes. Therefore, an investigation in that direction is highly recommended, to be reported to the prosecutor appointed to the matter at hand.