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DISREGARD OF THE CORPORATE ENTITY IN RUSSIAN CASE LAW

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ABSTRACT | 摘要 | RESUMEN

This paper reviews the legal doctrines developed in case law and used to challenge corporate decisions and resulting transactions: the doctrine of piercing the corporate veil, the beneficial ownership doctrine, affiliation, and corporate estoppel. When applied, these doctrines strip the entity of its incorporated status and separate existence. The article observes that the doctrines under discussion are used to stop abuse by managers and directors in corporate contexts. The author concludes that, where affiliated, an entity does not hide behind the corporate veil, as is the case in the doctrine of lifting the corporate veil, but exercises corporate control openly. Also, the beneficial ownership doctrine is applicable when an entity holds equity interests not directly but through a chain of affiliated companies and trusts. The following circumstances can provide grounds for applying this type of estoppel to challenge a corporate decision: non-compliance with corporate customs and standard forms of the documents recording the decision-making process; non-compliance with the time-honored procedure for corporate discussion and decision-making; a person was deceived into thinking that they were dealing with a company, whereas it was a citizen, and vice versa.

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1. INTRODUCTION

Resolution of corporate conflicts is far from an easy field because the current corporate Law in Russia is conservative in its treatment of different corporate interests: those of owners/shareholders, managers/directors, beneficiaries, controlling persons etc. That is the reason why the supreme judicial authorities in Russia adopted doctrines such as the doctrine of shareholder reinstatement, the doctrine of piercing the corporate veil, the beneficial ownership doctrine, corporate estoppel etc. It is these doctrines that are quite often invoked in challenges to corporate decisions and transactions.

It is necessary to clarify that legal precedents are not given the authority of Law in the Russian legal framework. Yet precedent-setting judgments of supreme judicial authorities are treated not unlike case law.

Some of the above judicial doctrines have been passed into Law, such as the affiliation doctrine, art. 53.2 of RF CC [Civil Code of the Russian Federation] (as enacted by the Federal Law of 05.05.2014, No 99-FZ), and the doctrine of shareholder reinstatement, cl. 3, art. 65.2 of the RF CC.

The above judicial doctrines are certainly a step forward, so they are popular with lawyers. There is, however, the issue of differentiating between these doctrines in the context of specific legal challenges to corporate decisions and resulting transactions. Each of the judicial doctrines described has its scope and criteria of application. However, they are quite often difficult to differentiate from one another in the context of legal proceedings.

Although all of them are rooted in the principle of good faith, these doctrines differ in their scope of application and must not conflict with each other. The judicial doctrines under discussion have both common features, which enable their systematization and differences. Let us start reviewing our subject by identifying and analyzing the shared features of these judicial doctrines.

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2. THE SYSTEM OF JUDICIAL DOCTRINES PREDICATED ON THE DISREGARD OF THE CORPORATE ENTITY

The judicial doctrines under discussion form a system of remedies for corporate players and counterparties with corporate rights, legitimate interests and expectations.

These doctrines have the following common features. First, they are predicated on the principle of bona fides. That is, they are applicable whenever a person is technically acting within the Law, but his behavior is at variance with the customary practice or follows the letter of the Law so narrowly that it defeats the meaning and purpose of the statute.

For example, can owners (shareholders) make any corporate decision involving a company under their control or are they subject to certain limitations? The answer is naturally in the negative. All jurisdictions with developed legal systems have the so-called business judgment rule – the owner (shareholder) who makes the key decisions on the core aspects of the company's operations is immune to claims for damages as a result of his corporate decision if made within the limits of reasonable business risk [2; 3; 6; 7; 8; 14]. This is precisely the bona fide requirement for a corporate decision. A breach of this requirement gives cause to challenge the corporate decision.

Second, the doctrines under discussion are rooted in the idea of "disregard of the corporate entity," which equates the corporate entity with its beneficiaries and treats them as its alter ego. The equaling of the beneficiary with the controlled company leads to disregarding the corporate entity and the corporate autonomy: the acts and will of the beneficiary are deemed to be the acts and will of the controlled company. That happens because of their shared economic interest, as the person controlling the company through a chain of affiliated companies and trusts derives a benefit from the business operations of the controlled company and makes money through such business structuring.

The very nature of a legal entity is predicated on its having a separate personality at Law, on the principle of corporate autonomy and limited liability. This principle has a variety of names: the separation principle, the autonomy principle, the principle of separateness, the principle of severed liability, and the principle of limited liability.

This principle separates the assets of the owner and those of the company and severs the liability of the legal entity from that of its owner for each other's debts (art. 56 of the RF CC). In light of the

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foregoing, the general rule is that the controlling person, the beneficiary, is not liable for the debts of the controlled company. However, this rule can have exceptions to protect the interests of the company's creditors when its controlling person abuses his corporate control. The principle of autonomy of entities will then be set aside as a general rule, and the disregard of the corporate entity will then be applied as the exception to the general rule.

Such artificial persons can be created as legal fiction by applying the veil of incorporation, where the company is properly managed, adequately capitalized, and does not commingle its assets with its owner's assets. If the above criteria are not met, then this suggests an abuse of corporate rights by the company's beneficiaries.

The separation principle, which means that the company is independent and has a separate legal personality, is a fundamental principle of corporate Law. But, like so many civil statutes, it has a limited scope. This principle can only be disregarded where superseded by the principle of good faith as a doctrine of civil Law. Naturally, it can only be set aside in this way by way of exception. The doctrines under discussion are exceptional because they call for reasonable criteria when the autonomy principle is abandoned.

R.B. Thompson noted the exceptionality of the doctrine of lifting the corporate veil. He writes that "piercing the corporate veil refers to the judicially imposed exception to this principle by which courts disregard the separateness of the corporation and hold a shareholder responsible for the corporation's action as if it were the shareholder's own" [18, 1036].

The disregard of the corporate entity is referred to in Russian Case Law as formal corporate capacity[1]; a controlled legal entity is called an operating company or a nominee company (straw companies).

Third, said judicial doctrines are predicated on the exercise of corporate control and dependence of persons, that is, on one person influencing the activities of another person or these persons being intertwined to such an extent that one person can influence the corporate decisions of the other person.

[1] *See* the RF Supreme Court determination of 24.02.2015, No 309-8555, in case No A60-43671/2013; the RF Supreme Court determination of 13.11.2014, No 304-3454, in case No A45-3141/2013.

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According to D.C. Bayne, control has always been at the centre of Corporate Law, and a controlling person is a central figure at a corporation who directly influences the public good [5, XIII].

A definition of corporate control can be found in US case law. For example, in *Kaplan* vs. *Centex Corp*., the court held that control implies, at a minimum, an influence over corporate behavior in keeping with the wishes or interests of the persons exercising control (Kaplan vs. Centex Corp., Del. Ch., 284 A.2d 119). E.S. Herman directly links corporate control to influence over corporate decision-making [10, 17 and 19].

The notion of corporate control can also be found in the Russian legislation. For example, cl. 1, art. 67.3 of the RF CC suggests that corporate control means "influence over the company's decision-making."

Corporate control can be either de jure (equity holding/contract) or de facto. De facto control is the influence over the controlled company's decision-making, absent technical, statutory grounds for influencing the other person. The rationale for a controlling or controlled person to join litigation where it has no privity is predicated on the doctrines of "legal interest" and "legitimate expectations." For example, where the corporate veil is lifted, the debts are chargeable to the personal estate of the controlling person [12, 41–42; 13]. Where the beneficial ownership doctrine is invoked, an entity that is not the company's shareholder but that controls it through a chain of affiliates and trust agreements can challenge a decision of the company because, by virtue of controlling the company, the beneficiary has a legitimate interest in preserving and augmenting the company's assets.

Corporate control can be either direct or indirect. For example, where ownership is beneficial, control is indirect because it is exercised through a chain of companies and trusts. With affiliates, corporate control is mostly direct.

Controllableness is manifested in the fact that the entity is in a position to influence the decisions made by a controlled company. It is important to understand that, per se, corporate control over a company is not necessarily a bad thing. The doctrines under discussion do not come into play until after the controlling person abuses corporate governance. According to jurists, such abuses manifest themselves in micromanagement of the controlled company, far in excess of usual control [15, 8].

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In an attempt to prevent corporate abuses, US law imposes on the controlling person fiduciary duties, the duty of care and the duty of loyalty [1, 1257; 16, 1076]. The fiduciary nature of corporate control shifts onto the controlling person the burden of proving that corporate decisions and resulting transactions were justified.

A similar rule is also laid down in Russian legislation. By virtue of cl. 3, art. 53.1 of the RF CC, a person in a position to control a legal entity is required to serve the entity reasonably and in good faith and is liable for losses he causes the entity. In other words, this requirement is designed to protect the controlled company rather than anybody who incurs losses due to the controlled company's activities.

Fourth, the judicial doctrines under discussion are designed to put things back the way they were before the cause of action arose. They do not seek to impose additional liability on the wrongdoer.

Fifth, the examination of the corporate dispute based on said judicial doctrines is based on the method of economic analysis of Law. The court looks at a situation that involves no technical breach of Law as yet, but that has already produced adverse consequences, which can be measured in monetary terms or which are unrelated to any infringement of a specific statute. This reiterates the important idea that a legal entity is an independent identity at Law, and one may not deny it other than by way of exception under extraordinary circumstances. To all intents and purposes, in applying the doctrines under discussion, the court provides risk management based on a reasonable understanding of the effectiveness of this or that rule of Law in protecting the legitimate interests and expectations of private-law actors.

Those are the common features of the judicial doctrines under discussion. Their analysis enables a better understanding of the legal nature of the phenomena involved. What is more, it explains the background of the balance/conflict between these doctrines.

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3. THE REASONS FOR INTRODUCING JUDICIAL DOCTRINES BASED ON DISREGARD OF THE CORPORATE ENTITY INTO RUSSIAN LAW

The doctrines under discussion were developed in the Common Law system. The secret of such progressiveness is that, historically, the Corporate Law of England has been evolving over a longer time frame than the Corporate Law of most countries in continental Europe and Russia. It is also important to understand that Law is not, per se, strictly national in character. And least of all private Law, which rests on constructs developed a thousand years ago in Ancient Rome and studied by first-year students in Law 101 courses. Law is inherently international. That is why there is no shame in Russian courts trying to implement legal constructs and legal doctrines developed abroad, adapting them to suit the Russian legal system.

As of this writing, Russian jurists are entering a new spiral of debate as to whether Law is national or international in its nature. A.A. Ivanov, president of the RF Supreme Court of Arbitrazh, now retired, argues that Law is inherently mostly national in character and Russian Law holds no appeal for foreign jurists[2]. He is opposed by D.Ya. Maleshin, a professor at the Lomonosov Moscow State University, who contends that the legislation of any country is unique and so is national in character; however, Law is wider in scope than legislation and is not identical thereto; therefore, Law is international[3]. The opinion of D.I. Maleshin seems to be all the more compelling because he puts forward ideas to be explored by Russian jurists to make the subject interesting at the international level. Among other things, he points out that "this country has its own case law, even if the legal rule was originally borrowed."[4] It is this thesis that is important for a review of our subject: the doctrines under discussion have been devised and developed by English lawyers, but in the process of being implemented in the Russian legal system, these doctrines undergo major changes and acquire new properties. Moreover, the bulk of these legal doctrines are introduced in the context of legal precedents and are developed and refined as the case law evolves. It is also important to understand here that the legal doctrines under discussion are being incorporated into the Russian legal system for economic reasons: the widespread use of straw companies forces the courts to make case law to provide relief to persons who have suffered losses because the beneficiary abused his corporate control and hid behind a chain of companies.

[2] *See* https://zakon.ru/blog/2017/07/19/za_tremya_zajcami_pogonishsya
[3] *See* https://zakon.ru/discussion/2017/07/21/a_imeet_li_pravo_nacionalnyj_harakter
[4] Ibid.

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4. AFFILIATION DOCTRINE IN CHALLENGES TO CORPORATE DECISIONS

The affiliation doctrine was developed in English Law. By the affiliation criterion is meant control through ownership of the company or via a contract. Two companies become affiliated through equity ownership up the chain of ownership from a subsidiary to the parent and then down to another subsidiary.

The affiliation doctrine is currently being pushed to the back burner in the UK, giving way to the regulation of relations between parent, subsidiary and sister companies. What is more, the doctrine of piercing the corporate veil is more prominent than affiliation in the English legal system, making for a more rigorous approach to establishing affiliation. For the purpose of identifying a corporate group, the affiliation doctrine has been replaced with the concept of economic undertakings. An economic undertaking means any such group of persons engaged in joint economic activities, whatever their legal status and business financing arrangements, as is recognized as a single entity.

Commitment to developing the theory of subsidiaries can also be found in Russian legislation. For example, cl. 1, art. 67.3 of the RF CC says, "a business company shall be deemed to be a subsidiary if the other (parent) business partnership or company … is in a position to influence the company's decision-making".

The Russian legislation is paradoxical in that it develops both the affiliation doctrine and the theory of subsidiaries in parallel. They are not subordinated or separated. In this context, the very concept of "affiliation," if viewed in isolation from contestation of corporate decisions, as a general term, is a broader category than even corporate control. This is because affiliation does not always involve the exercise of corporate control. That is why, to challenge a corporate decision under the affiliation doctrine, a link between entities must involve the establishment and exercise of corporate control.

For a long time, in the course of discussion of a framework for reforming Russia's civil legislation (2009-2013), the doctrine of piercing the corporate veil was contrasted with the doctrine of affiliation between entities. There was a debate over which of those two doctrines should be enacted into Law.

Affiliation means one entity being in a position to influence the decisions of another by virtue of one being dependent on another; the entities' interest in making any transaction; the degree of affiliation between the entities based on a shared purpose, economic and corporate interests.

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Because others can influence a corporate decision, it can be challenged on grounds of affiliation. Affiliation can either be disclosed voluntarily or forcibly through the courts. In the latter case, this must be a step in proving rather than a separate demand of the plaintiff.

The reasons for affiliation in business contexts can be different: kinship or other personal relationships between individuals serving as corporate governors; contractual arrangements that enable a party to influence another party; corporate arrangements based on majority equity holding, etc. However, it is important to understand that affiliation must be based on a direct and close link between entities, and on indirect influence by exception only.

Unlike affiliation, the doctrine of piercing the corporate veil relates to a more specific situation – holding a person who controls a technically independent company liable for debts of the controlled company. Affiliation involves coordination between entities based on common interests. Piercing the corporate veil applies to a situation where a company is directed by an outside person who influences corporate decision-making.

The key difference between the two doctrines under discussion is that affiliation is an open, public link between entities. Control by affiliation is not hidden but public. A search of official records readily identifies the relationship between affiliates. The need to invoke the doctrine of lifting the corporate veil arises when a controlling person hides their identity.

Out of the two competing legal doctrines, the Russian legislature has chosen to develop the theory of affiliation. On 1 September 2014, the RF CC received article 53.2, which states: "Where this Code or another law makes legal effects contingent upon association between entities (affiliation), the presence or absence of such relationship shall be determined statutorily."

Cl. 3, art. 53.1 of the RF CC ("power of direction") enshrines the concept of a shadow director [4, 304; 11, 326-327]. The Russian case law usually looks at the situation from an opposite angle: from the

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angle of a person referred to as a nominee director, a straw man[5]. This legal construct is also used, inter alia, in criminal trials[6].

Clause 3, art. 53.1 of the RF CC has yet another dimension to its applicability to Russian companies such as obshchestvos s ogranichennoy otvetstvennostyu [limited companies]. By virtue of cl. 3.1., art. 3 of the Federal Law of 8 February 1998, "Limited Companies Act", if a limited company defaults on its debts because persons referred to in cl. 1-3, art. 53.1 of the RF CC, acted in bad faith or unreasonably, such persons can be held vicariously liable, if requested by a creditor, for the debts of the limited company, even if it is struck from the national register of legal entities as being out of business (abandoned). This means that a controlling person is liable for a controlled company's debts if corporate control is abused even after the company is wound up and liquidated.

Given that the affiliation doctrine is set out in the RF CC in the broadest strokes and the statutory provision of art. 53.2 is extremely vague; the affiliation doctrine is rapidly evolving in case law, becoming more and more elaborate.

The RF Supreme Court distinguishes between two types of affiliation: de jure and de facto. For, in accordance with the bright-line rule set forth in the RF SC determination of 15.06.2016, No 308-ES16-1475, shared economic interests can be proved in a bankruptcy case through the establishment of not only de jure affiliation (specifically, affiliation of entities through a relationship between subsidiaries and parents), but also de facto affiliation.

As a general rule, affiliation means shared business (economic and corporate) interests. Of interest in this context is the bright-line rule set forth by the SCRF SC in its determination of 26 May 2017, No 306-ES16-20056(6), in case No A12-45751/2015, formulated based on an assessment of affiliation within a group of companies, security provided by affiliated companies can be treated as joint security where the following conditions are met: 1) a member of a corporate group receives credit facilities; 2) other members

[5] *See* the RF Supreme Court determination of 03.02.2017, No 303-20889 in case No A37-2832/2012; the RF Supreme Court determination of 06.06.2016, No 309-KG16-5181, in case No A76-5926/2015; the RF Supreme Court determination of 22.04.2015, No 307-ES15-2587, in case No A66-9175/2011; the RF Supreme Court determination of 24.02.2015, No 309-8555, in case No A60-43671/2013; the RF Supreme Court determination of 13.11.2014, No 304-3454, in case No A45-3141/2013; judgment of the Arbitrazh Court of Volga-Vyatka Okrug of 16.09.2016, No F01-3608/2016, in case No A11-410/2015; judgment of the Arbitrazh Court of Moscow Okrug of 28.12.2016, No F05-20108/2016, in case No A40-49897/2016; judgment of the Arbitrazh Court of Ural Okrug of 16.06.2016, No F09-5704/16, in case No A76-20579/2015.

[6] *See* appeal judgment the RF Supreme Court of 24.12.2015, No 45-APU15-53; determination of the RF Supreme Court of 08.09.2015, No 32-UD15-2; determination of the RF Supreme Court of 03.09.2012, No 35-Dp12-13.

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of the same corporate group stand surety for it; 3) the sureties have shared economic interests with the borrower and are controlled by the same beneficiary; 4) upon receipt of financing, the sureties are aware that the suretyship is designed to share the risk of the borrower's default equally among all members of the corporate group. Therefore, the sureties for the debtors are jointly and severally liable for the debt to the creditor.

Therefore, in the context of legal case No A12-45751/2015, the creditor filed for including his claim on the register solely for the illegal purpose of reducing the number of votes held by arm's-length creditors for the benefit of the debtor and his affiliates. And by virtue of art. 10 of the RF CC, this must be found to be bad faith, which provides cause to deny the request.

In the reviewed case, the court applied the doctrines of affiliation and abuse of rights. The bright-line rule set forth by RF SC was subsequently developed in the following court rulings based on the doctrine of equitable subordination, known in common law countries as the Deep Rock Doctrine.

The above analysis suggests the following definition of affiliation: the ability to directly or indirectly influence an economic agent through the relationships and dependence (de jure or de facto) between technically independent persons that are based on control (exercised openly and publicly) and shared economic and corporate interests.

5. CORPORATE ESTOPPEL AND CHALLENGING CORPORATE DECISIONS

On the most general level, estoppel means that a party is prohibited from changing their original behavior if their counterparty has reasonably relied thereon and started acting in keeping with this reliance. It is based on the behavior of their counterparties that entities make their corporate decisions, which can be challenged on the grounds of the ban on inconsistent behavior.

Estoppel is a compensatory mechanism to deal with a clash of civil law principles. This is because, like any doctrine based upon the principle of good faith, estoppel applies where there is no wrongdoing, but there still is a wrong. This means that a party is free to act (the principle of free will, legality), but, having changed its behavior, it, though not in breach of any statute, must be held accountable for such change in its behavior if the counterparty has relied on its original behavior. This resembles a collision of

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two principles: Good Faith and Rule of Law. For the resolution of collisions, we need rules such as estoppel.

The ban on inconsistent behavior has been developed and is widely used in common law countries. What is more, the legal system of these countries knows quite a few estoppels, the systematization of which is an independent field of legal research [9, 432–434; 17, 21–24].

The well-known lyrics of the Duke's aria from G. Verdi's opera Rigoletto aptly illustrate the need for a rule such as estoppel:

"La donna è mobile

Qual piuma al vento,

Muta d'accento — e di pensiero".

However, lawyers are well aware that not only beauties tend to be fickle, but many entities are also prone to inconsistent behavior.

The Russian legislature elected not to enact in the RF CC a blanket ban such as estoppel, opting for laying down certain rules on estoppel in several articles (for example, cl. 1, art. 165, par. 4, cl. 2, art. 166, cl. 5, art. 166, cl. 3, art. 173^1, cl. 2, art. 431^1 etc.).

There are five grounds for the application of corporate estoppel to challenge a decision: First, where a meeting that adopted the contested decision did not comply with all corporate customs and standards regarding the form of the documents recording the meeting process. Second, non-compliance with the time-honored procedure for corporate discussion and decision-making. The behavioral inconsistency here is that the procedure for the challenged decision differed from that used on numerous occasions. Third, the person was deceived into thinking that he was dealing with an individual, whereas it was a company, and vice versa. Fourth, estoppel can be applied on grounds of a relationship between a controlling person and a controlled company and the resulting awareness of certain facts pertaining to all corporate group members. Fifth, estoppel can be invoked when a person involved in the adoption of the decision but who opposes some of the decisions made legally challenges a corporate decision. For example, in legal case No A33-14337/2010, a shareholder contested the election of the board of directors because fewer of his nominees were elected than he expected, with his corporate control diminished.

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However, such a challenge was untenable because the shareholder voted at the meeting to elect the board of directors and specifically voted for his nominees. Therefore, by voting at the meeting, the shareholder legitimized the meeting itself, the resolution passed, and his legal action triggered estoppel. The claim was denied as frivolous litigation. The implications of corporate estoppel are described in art. 10 of the RF CC and mostly consist of denial of redress where estoppel' applies.

6. CONCLUSIONS

Incorporating the doctrines under discussion into the Russian case law can be seen as quite justified and progressive. This is because the Legal Entity construct is often used in Russia to abuse corporate rights, and incorporation is used to extend abuses to property and contracts. Like a poisonous tree that bears no edible fruit, abuse of corporate control in a company poisons all its business operations. That is why Russian courts cannot ignore wrongdoing, such as abuse of corporate rights by incorporating straw and undercapitalized companies. Therefore, a corporate decision made through abuse of corporate control, in breach of the business judgment rule, must be challenged, as must the transactions and contracts made in furtherance thereof.

To be sure, these doctrines disregard the separate legal personality of companies, which is at variance with the general rule, the fundamental principle of corporate autonomy and independence. Separate legal personality may not, however, be disregarded at will but is allowed by way of exception only.

The doctrines under review have both shared and distinguishing features. What they seem to have in common is that they can be used as a good-faith remedy; they are predicated on disregard of the corporate entity; they are linked to the validation of corporate control; the doctrines must enable restitutio ad integrum; the adjudication of a corporate dispute in light of said judicial doctrines is based on economic analysis of Law. Each of the doctrines under discussion has its own scope of application; they do not clash and are used on a case-by-case basis where applicable.

The difference between the affiliation doctrine and the doctrine of lifting the corporate veil is rooted in affiliation as an open, public link between entities. Control by affiliation is not hidden but public:

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the relationship between affiliates is readily identified by a search of official records. The doctrine of piercing the corporate veil is applicable where a controlling person hides his identity.

Corporate estoppel is used in challenges to general meeting resolutions. The following circumstances can provide grounds for applying this type of estoppel to challenge a corporate decision: non-compliance with corporate customs and standard forms of the documents recording the decision-making process; non-compliance with the time-honored procedure for corporate discussion and decision-making; a person was deceived into thinking that he was dealing with a company, whereas in actual fact it was a citizen, and vice versa; insider knowledge due to a relationship between a controlling person and a controlled company; a legal challenge to a corporate decision is made by a person who was involved in the adoption of the decision but opposes some of the decisions made.

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ABOUT THIS ARTICLE

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DESCONSIDERACIÓN DE LA ENTIDAD CORPORATIVA EN LA JURISPRUDENCIA RUSA

RESUMEN

Este artículo revisa las doctrinas legales desarrolladas en la jurisprudencia y utilizadas para impugnar decisiones corporativas y las transacciones resultantes: la doctrina del levantamiento del velo corporativo, la doctrina de la propiedad beneficiaria, la afiliación y el estoppel corporativo. Cuando se aplican, estas doctrinas eliminan el estatus de entidad incorporada y su existencia separada. El artículo observa que las doctrinas en discusión se utilizan para detener los abusos cometidos por gerentes y directores en contextos corporativos. El autor concluye que, en casos de afiliación, una entidad no se oculta detrás del velo corporativo, como sucede en la doctrina del levantamiento del velo corporativo, sino que ejerce el control corporativo de manera abierta. Además, la doctrina de la propiedad beneficiaria es aplicable cuando una entidad posee participaciones accionarias no directamente, sino a través de una cadena de empresas afiliadas y fideicomisos. Las siguientes circunstancias pueden proporcionar fundamentos para aplicar este tipo de estoppel para impugnar una decisión corporativa: el incumplimiento de las costumbres corporativas y los formatos estándar de los documentos que registran el proceso de toma de decisiones; el incumplimiento del procedimiento consagrado para la discusión y toma de decisiones corporativas; o el hecho de que una persona haya sido engañada para creer que estaba tratando con una empresa cuando en realidad era un ciudadano, y viceversa.

Palabras clave: derecho civil, derecho corporativo, regla de juicio empresarial, control corporativo, velo corporativo, doctrina del estoppel corporativo, abuso de derechos

俄罗斯案例法中的法人实体无视问题

摘要

本文回顾了案例法中发展起来并用于质疑公司决策及其交易结果的法律理论：揭开公司面纱理论、实益所有权理论、关联理论以及公司禁止反言理论。当这些理论被应用时，会剥夺实体的法人地位及其独立存在性。文章指出，讨论中的这些理论主要用于阻止经理和董事在公司背景下的滥用行为。作者总结说，在关联情况下，实体不是像揭开公司面纱理论那样隐藏在公司面纱之后，而是公开行使公司控制权。此外，当一个实体通过关联公司和信托链间接持有权益时，可以适用实益所有权理论。以下情况可能成为应用这种禁止反言理论来质疑公司决策的依据：未遵守记录决策过程的公司惯例和标准文件格式；未遵守长期以来确立的公司讨论与决策程序；或者某人被误导以为自己在与一家公司打交道，实际上是与个人交往，反之亦然。

关键词：民法、公司法、商业判断规则、公司控制、公司面纱、公司禁止反言、权利滥用

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