Piercing the Corporate Veil under the new Kuwait companies law

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However, and particularly under Kuwaiti law, under certain circumstances the ability to circumvent the protection provided by the corporate veil and to hold such owners, shareholders, directors and managers personally accountable and liable has been available since the passing of the Kuwait Companies Law No 15 of 1960 (the "Old Law").

Under the Old Law, the ability to "pierce the corporate veil" revolved around actions made by leaders of a company (i.e., managers, board members) including but not limited to cheating, abuse of power, violation of constitutive documents and mismanagement. The process for filing such claims and obtaining the information to hold them accountable, however, was limited in nature.

However, under the new Companies Law No 25 of 2012 (the "New Law"), there are several utilities available for stakeholders to hold certain individuals such as board directors, shareholders, and managers accountable for their actions. For example, under a shareholding company, the general assembly of shareholders, under Article 234, may file a lawsuit against its board of directors, and even in the event of liquidation, the respective liquidator retains the same authority. Furthermore, where the general assembly fails to file such a claim, Article 235 of the New Law provides a shareholder the ability to file a claim, in an individual capacity, on behalf of the company against the board. Notwithstanding the above, in the event a shareholder sustains personal damage, the same Article provides him the ability to file a claim in a personal capacity against the board.

Although the aforementioned concepts are not uncommon under most contemporary jurisprudence, Chapter One of Book Thirteen ("Supervision and Inspection") of the New Law (Articles 327 – 333) provides relevant stakeholders with expanded abilities to pierce the corporate veil. For example, in the event the Ministry of Commerce and Industry ("MOCI") holds an audit of a company either through its own volition (Article 327) or pursuant to a request made by shareholders / partners representing at least 5% of the capital (Article 329), the Ministry may, under Article 328, invite the general assembly or partners' assembly to convene to cure such violation within fifteen days from the date of the meeting. In addition, in the event a request for an audit is dismissed by the MOCI, under Article 331, the respective stakeholders may file a claim in the Court of First Instance to issue a writ of mandamus to conduct such audit by an expert.

For those facing such an inspection or an audit, cooperation with the same has also become a fiduciary duty. Under Article 333, such personnel must grant access to the inspector of all respective records and documents, otherwise the penalties for failure to provide the same, under Article 335, may include imprisonment of not more than one year and a fine of not less than KD5,000 or more than KD 10,000.

Ultimately, the intent of the New Law in holding leaders and those with fiduciary duties accountable is evidenced by the enactment of the aforementioned articles. Nevertheless, there are several other areas under the New Law where such areas are addressed and will be addressed in future articles. Furthermore, it should be viewed as a welcomed change under the law by providing enhanced risk management and protection to those seeking to conduct business in Kuwait and entrust individuals with its assets.