Piercing the corporate veil and PDVSA

by Carlos Eduardo Acedo[1]

SUMMARY. Court and arbitration decisions tend to be cautious about piercing the corporate veil, unless certain requirements are met. However, in Venezuela, since 2004, there are no requirements to pierce the corporate veil, other than to establish that there is a group of companies. This applies to the Venezuelan State-owned oil company, Petróleos de Venezuela, S.A. ("**PDVSA**") and all its affiliates in Venezuela and abroad (the "**Affiliates**"). There are three criteria to determine a group relationship: ownership, control or a legal provision establishing the linkage between the member companies. PDVSA and its Affiliates meet the three criteria. There is no need to establish fraud or any other illegality.

1. Venezuela's highest court is the Supreme Tribunal of Justice (the "**Supreme Tribunal**"). The Constitutional Chamber of the Supreme Tribunal (the "**Constitutional Chamber**") can annul decisions, on the grounds of unconstitutionality, issued by, among others, (i) the Civil Cassation Chamber of the Supreme Tribunal (the "**Civil Chamber**"), which deals with civil or commercial relationships; (ii) the Social Cassation Chamber of the Supreme Tribunal (the "**Social Chamber**"), which deals with labor relationships; and (iii) the Political and Administrative Chamber of the Supreme Tribunal (the "**Political Chamber**"), which deals with cases where one of the parties is a public sector entity. The Constitutional Chamber's decisions, when interpreting or applying constitutional rules and principles, are binding, according to the second part of Article 335 of the Constitution of the Bolivarian Republic of Venezuela (the "**Constitution**"), which provides the following:

> "The interpretations made by the Constitutional Chamber about the contents or scope of the constitutional rules and principles are binding on the other Chambers of the Supreme Tribunal of Justice and the other courts of the Republic".[2]

2. On May 14, 2004, the Constitutional Chamber issued a ruling in the case of Ignacio Narváez Hernández against Transporte Saet La Guaira, C.A. and Transporte Saet, S.A. (the "**Saet Precedent**").[3] The Saet Precedent has received considerable attention from academics, professors and authors.[4] Briefly, a creditor, who was an employee of a company (Transporte Saet La Guaira, C.A.), sued this company, which received service; the ensuing ruling condemned another member of the same group (Transporte Saet, S.A.) to pay a certain amount of money; and the Constitutional Chamber, in the Saet Precedent, allowed the enforcement of such ruling against the latter. In the Saet Precedent, the Constitutional Chamber mentioned the Organic Law on Labor and its Regulations, but it also mentioned several laws totally unrelated to labor cases. Even though the Saet Precedent was issued in a labor case, it establishes general principles

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[2] The relevant text in Spanish is as follows: "Las interpretaciones que establezca la Sala Constitucional sobre el contenido o alcance de las normas y principios constitucionales son vinculantes para las otras Salas del Tribunal Supremo de Justicia y demás tribunales de la República".

[3] The Saet Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/mayo/903-140504-03-0796%20.HTM

[4] The *Academia de Ciencias Políticas y Sociales* organized an event to discuss the Saet Precedent, and published a book about it, called Derecho de Grupos de Sociedades, Caracas, 2005.

that apply in non-labor cases. In fact, the Saet Precedent invoked all the following non-labor legislation:

> "[T]he Law for the Protection of the Consumer and the User (Article 15), the Law to Promote and Protect the Exercise of Free Competition (Articles 14 and 15), the Decree with Rank and Force of Law on Banks and other Financial Institutions (Articles 161 to 170), the abrogated Law for the Regulation of the Financial Emergency (Articles 16 to 20), the Organic Code on Tax (Article 28.3), the Law on Income Tax (Articles 7 and 10), the Decree with Rank and Force of Law Establishing the Value Added Tax (Article 1), the Decree with Rank and Force of Law of Insurance and Reinsurance (Article 9), the Telecommunications Law (Article 191)…, among others".[5]

The Saet Precedent drew a general rule from all such laws, which, up to then, were considered to be exceptions to a general rule according to which each company within a corporate group is a separate legal entity, with its own assets and liabilities. In other words, with the Saet Precedent, the exceptions became the rule, which now is that the corporate veil may be pierced whenever the court establishes that there is a group of companies. In the Saet Precedent, the Constitutional Chamber made a general pronouncement with respect to all these laws, which have in common that they include provisions that establish the piercing of the corporate veil. With respect to these laws, the Constitutional Chamber stated the following:

> "[T]he existence of entrepreneurial or financial groups is licit, but, given the use by the controlling person of the different legal entities (linked companies) to dilute through them the controlling person's or the group's liability, in their relationships with third parties, there are rules in several laws with the purpose of ignoring or overcoming the legal personality of these linked companies, allowing the creditor of one of these companies to sue the other, with which, objectively, it had no legal relationship, so that the latter complies, without having the possibility to defend itself by claiming the lack of standing".[6]

> "This Chamber considers that, if the laws mentioned in this decision recognize –for the purposes of each one of them– the existence of economic groups, such legal recognition, which creates obligations and rights, presupposes that, outside of such laws and their specific provisions, the groups also exist, since it cannot be that they are recognized in some cases and not in others".[7]

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[5] The relevant text in Spanish is as follows: "…la Ley de Protección al Consumidor y al Usuario (artículo 15), la Ley para Promover y Proteger el Ejercicio de la Libre Competencia (artículos 14 y 15), el Decreto con Rango y Fuerza de Ley General de Bancos y Otras Instituciones Financieras (artículos 161 al 170), la derogada Ley de Regulación de la Emergencia Financiera (artículos 16 al 20), el Código Orgánico Tributario (artículo 28.3), la Ley de Impuesto sobre la Renta (artículos 7 y 10), el Decreto con Rango y Fuerza de Ley que establece el Impuesto al Valor Agregado (artículo 1º), el Decreto con Rango y Fuerza de Ley de Empresas de Seguros y Reaseguros (artículo 9), la Ley Orgánica de Telecomunicaciones (artículo 191)…, entre otras."

[6] The relevant text in Spanish is as follows: "la existencia de grupos empresariales o financieros es lícita, pero ante la utilización por parte del controlante de las diversas personas jurídicas (sociedades vinculadas) para diluir en ellas su responsabilidad o la del grupo, en sus relaciones con las terceras personas, han surgido normas en diversas leyes que persiguen la desestimación o allanamiento de la personalidad jurídica de dichas sociedades vinculadas, permitiendo al acreedor de una de dichas sociedades, accionar contra otra con la que carecía objetivamente de relación jurídica, para que le cumpla, sin que ésta pueda oponerle su falta de cualidad o de interés."

[7] The relevant text in Spanish is as follows: "Considera esta Sala que, si las leyes citadas en esta sentencia, reconocen –para los fines de cada una de ellas– la existencia de grupos económicos, tal reconocimiento legal, que les genera obligaciones y derechos, presupone que fuera de esas leyes y sus puntuales normas, los grupos también existen, ya que no puede ser que se les reconozca para determinados supuestos y para otros no".

The Constitutional Chamber mentioned, in the Saet Precedent, Article 1264 of the Civil Code, which establishes the following:

> "The persons who assume jointly an indivisible obligation are each of them obliged for the total".[8]

Before the Saet Precedent, this simply meant that, if an obligation could not be divided and if such obligation had several debtors, then its creditor could request any of the debtors to comply with this indivisible obligation. And Article 1250 of the Civil Code defines indivisible obligations as follows:

> "The obligation is indivisible when its object is an indivisible fact, the constitution or the transfer of a right that is not susceptible of division".[9]

But, following the Saet Precedent, the obligations of the members of a group of companies are also deemed to be indivisible obligations, which bind the whole group. Indeed, the Constitutional Chamber, in the same decision, stated the following:

> "[T]here being an indivisible obligation or its equivalent, each of the members of the group assumes and is bound by the totality (Article 1264 of the Civil Code)".[10]

Thus, the joint liability of the members of a group of companies, or, using this new terminology, the indivisibility of the obligations of a group of companies, established in the Saet Precedent, is now a general rule. Indeed, the Constitutional Chamber declared the following:

> "[E]conomic groups acquire, as such, liabilities and obligations, without regard to which sector of the group (which company) assumes them, so the legal responsibility of the specific liable companies is overlooked, and is extended to others, whose individuality as legal entities does not protect them".[11]

> "[T]**he economic or financial groups are legal institutions, which may have a transnational nature**"[12] (the emphasis is the Constitutional Chamber's).

> "[W]hen the economic unity is the reason for the group to exist, … the group is bound by an indivisible obligation..., the group's indivisible obligation, which acts as an economic unity and the obligation is shared between several persons. We are faced with a patrimonial unity that cannot be eluded by creating several legal entities. Whoever structures an economic group to act in the legal world, cannot elude the liabilities by means of the formalities of the instrumentation, in prejudice

[8] The relevant text in Spanish is as follows: "Quienes hubieran contraído conjuntamente una obligación indivisible, están obligados cada uno por la totalidad."
[9] The relevant text in Spanish is as follows: "La obligación es indivisible cuando tiene por objeto un hecho indivisible, la constitución o la transmisión de un derecho no susceptible de división."
[10] The relevant text in Spanish is as follows: "al existir una obligación indivisible o equiparable, cada uno de los miembros del grupo contrae y está obligado por la totalidad (artículo 1254 del Código Civil)".
[11] The relevant text in Spanish is as follows: "los grupos económicos adquieren como tal responsabilidades y obligaciones, sin importar cuál sector del grupo (cuál compañía) las asume, por lo que la personalidad jurídica de las sociedades responsables en concreto se desestima, y se hace extensible a otras, cuya individualidad como personas jurídicas no las protege".
[12] The relevant text in Spanish is as follows: "**los grupos económicos o financieros son instituciones legales, que pueden asumir carácter trasnacional**" (the emphasis is the Constitutional Chamber's).

> of contracting parties, third parties, the Tax Administration, etcetera… In the end, as members of this unity, they have knowledge of the group's obligation".[13]
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> "[T]here is managerial unity and economic unity, so that one is faced with a group, which must respond as such".[14]

When the Saet Precedent pierced the corporate veil, the Constitutional Chamber did not establish a fraud or any other tort, which would justify forcing one company to pay a debt owed by another company of the same group. The reasoning is that the indivisibility of the obligations of the corporate group gives rise, as a general rule, to a group liability, which prevents a fraud or another tort. So a fraud or other tort is not a requirement of the group liability; instead, the fraud or other tort is what the group liability seeks to prevent. Such group liability arises, as a general rule, from the indivisibility of the obligations of the companies of the group.[15]

This was objected to in the Saet Precedent's dissenting vote, issued by the Constitutional Chamber Judge Pedro Rafael Rondón Haaz on May 14, 2004 (the "**Saet Dissenting Vote**").[16] The Saet Dissenting Vote includes the following texts:

> "The preceding judgment makes direct reference… to the so-called theory of the piercing of the corporate veil, the concept of which has been delineated in several decisions issued by this Constitutional Chamber. However, such judgment seeks to amplify such theory –which is clearly exceptional– to establish its general application… The decision with respect to which I dissent…, in a very simple manner, explains an alleged general theory of the doctrine of the piercing of the corporate veil, applicable in all cases, independently of the existence of a Law that provides for the application of such theory… It is enough…, according to the decision in question, that a commercial company belongs to the same corporate group as another, for the enforcement, against the former, of unfavorable

[13] The relevant text in Spanish is as follows: "…cuando la unidad económica es la razón de ser del grupo,... el grupo queda obligado por una obligación indivisible… una obligación indivisible del grupo, que actúa como unidad económica y que se ejerce repartida entre varias personas. Se está ante una unidad patrimonial que no puede ser eludida por la creación de diversas personas jurídicas. Quien estructura un grupo económico para actuar en el mundo jurídico, no puede eludir las responsabilidades mediante lo formal de la instrumentalidad, en perjuicio de contratantes, terceros, Fisco, etcetera… Al fin y al cabo, como miembros de la unidad, conocen la obligación del grupo".

[14] The relevant text in Spanish is as follows: "existe unidad de gestión y unidad económica, por lo que se está ante un grupo, que debe responder como tal".

[15] The relevant text in Spanish is as follows:
"Las leyes que regulan los grupos económicos, financieros o empresariales evitan que las distintas compañías, con las personalidades jurídicas que les son propias, pero que conforman una unidad económica, o mantienen una unidad de dirección y que obran utilizando una o más personas jurídicas para su beneficio, evadan la responsabilidad grupal, ante el incumplimiento de las obligaciones asumidas por uno de sus componentes.
Con ello, se persigue legalmente evitar el abuso del derecho de asociarse, que produce una conducta ilícita, o impedir un fraude a la ley, o una simulación en perjuicio de terceros. Para evitar estas posibilidades, el ordenamiento jurídico ha señalado deberes y obligaciones solidarias a la actividad concertada entre personas jurídicas y para ello ha reconocido a los grupos, sean ellos económicos, financieros o empresariales, los cuales pueden obedecer en su constitución a diversos criterios que las mismas leyes recogen. Como unidades que son, existe la posibilidad de que ellos asuman también obligaciones indivisibles o equiparables a éstas, bien porque la ley así lo señale expresamente, o bien porque la ley -al reconocer la existencia del grupo y su responsabilidad como tal- acepta que se está frente a una unidad que, al obligarse, asume obligaciones que no pueden dividirse en partes, ya que corresponde a la unidad como un todo, por lo que tampoco puede ejecutarse en partes, si se exige a la unidad (grupo) la ejecución, así la exigencia sea a uno de sus componentes.
En consecuencia, al existir una obligación indivisible o equiparable, cada uno de los miembros del grupo contrae y está obligado por la totalidad (artículo 1254 del Código Civil)".

[16] The Saet Dissenting Vote was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/mayo/903-140504-03-0796%20.HTM

judgments rendered against the latter, even when, in the incorporation of such commercial companies, there was no illegality… [T]he considerations of the judgment have been formulated in a general manner, applicable to all the cases in which a certain company that conforms a corporate group is sued… The direct attribution of liability for the members of the group established by the judgement… originates this dissenting vote" [17] (the emphasis is the Saet Dissenting Vote's).

3. The Saet Precedent has been widely criticized, because the Constitutional Chamber pierced the corporate veil with respect to groups of companies in cases in which no written legal rule allowed it and there was no fraud or any other justification:

A) José Antonio Muci Borjas wrote the following in 2007:[18]

> "According to the Constitutional Chamber, the existence of a group of companies, as a factual premise, always results in the extension of the liability to the other companies of the group, as a legal consequence. There is no need for an abuse of rights or fraud to exist, that is, for the separateness of the legal entities to be used in a fraudulent or abusive manner. There is no need either for an actual damage to have been caused to a worker. It is equally irrelevant, immaterial, that the defendant has sufficient assets to honor any court decision, that is, that the company is not financially insolvent, and that, therefore, there is no risk that the enforcement of a decision will be impossible in practice".[19]

B) Alfredo Morles Hernández wrote the following in 2005:[20]

> "…The judgment ignores that commercial law teaches that a group of companies is a set of legally separate companies subject to a single economic direction. A global or joint liability can only be established by express written legal provisions

[17] The relevant text in Spanish is as follows: "El fallo que antecede hace directa referencia… a la llamada teoría del levantamiento del velo, cuyo concepto ha sido perfilado en distintas decisiones de esta Sala Constitucional. Sin embargo, se pretende la ampliación de esa teoría –claramente excepcional– y propugna su aplicación general… La sentencia de la cual se disiente…, de manera bastante simple, explana una supuesta teoría general de la doctrina del levantamiento del velo, aplicable a todos los casos, con independencia de la existencia de una Ley que dé cobertura a tal teoría… Bastará…, según la decisión en cuestión, que una sociedad mercantil pertenezca al mismo grupo empresarial que otra, para que, en su contra, puedan ejecutarse sentencias condenatorias que hubieren sido dictadas respecto de ésta última, ello aun cuando en la constitución de esas compañías comerciales no se haya incurrido en ninguna actuación ilícita… las consideraciones de la sentencia han sido formuladas de manera general, referibles a todos los supuestos en los cuales se demanda a determinada compañía de comercio que conformen un grupo empresarial… La imputación directa de responsabilidad para los integrantes del grupo que pretende la sentencia… origina este voto" (the emphasis is the Saet Dissenting Vote's).

[18] Muci Borjas, José Antonio: Los grupos de sociedades a la luz del Fallo "Transporte Saet C.A." This article is a presentation that José Antonio Muci Borjas made in January of the 2008, at the Third Conferences on Commercial Law, organized by the Universidad Católica Andrés Bello, in order to commemorate the bicentennial of the French Commercial Code of September 15, 2007. It is available in the Internet:
http://www.muci-abraham.com/uploads/publicaciones/527064fc6886d81a6472702802e8c738f14f6485.pdf

[19] The relevant text in Spanish is as follows: "Según la Sala Constitucional, de la existencia de un grupo de sociedades, presupuesto de hecho, se derivaría siempre, consecuencia jurídica, la extensión de la responsabilidad a las restantes sociedades del grupo. No hace falta que medie abuso de derecho o fraude, esto es, que se haya utilizado la personalidad jurídica de manera fraudulenta o abusiva. No hace falta tampoco que se le haya causado al trabajador al daño cierto. Es igualmente irrelevante, intrascendente, que la sociedad demandada cuente con haberes suficientes para honrar una eventual condena judicial, esto es, que no se halle en situación de insolvencia económica, y que, por lo tanto, no exista riesgo alguno de que la ejecución del fallo pueda tornarse en ilusoria".

[20] Morles Hernández, Alfredo: La regulación fragmentaria de los grupos de sociedades y su repercusión en la Jurisprudencia, published by Academia de Ciencias Políticas y Sociales in Derecho de Grupos de Sociedades, Caracas, 2005, pages 11 to 59.

–which do not exist in Venezuelan law– or by a court decision in a procedure in which it is proven that the parent company or another company of the group engaged in the facts that give rise to the liability declared in the judgment… the doctrine of piercing the corporate veil can only be used in cases of abuse of rights, unlawful concealment or fraud. None of these cases was invoked in the case decided".[21]

C) Allan R. Brewer-Carías wrote the following in 2005:[22]

> "In the case decided by the Constitutional Court, if one can effectively identify any abuse, it is in the use of the theory of the piercing of the veil of legal personality and the indiscriminate generalization incurred by the Constitutional Chamber, ignoring its exceptional nature and the need to apply it always in accordance with an express provision of law, since it is a limitation to the constitutional right of association and of economic freedom".[23]

D) Luisa Acedo de Lepervanche and I wrote the following in 2005:[24]

> "[T]he Constitutional Chamber invoked the existing exceptions in various laws to try to draw a general rule…, which applies, at least, when one of the parties qualifies as the weaker party. The judgment, based on these exceptional legal provisions, states, as a general principle, that the obligations assumed by any member of a group of companies are indivisible obligations, which can be enforced against both the group and any of its members… The general principle thus invented by the Constitutional Chamber contradicts the general principle… expressed in several articles of our civil and commercial codes, according to which the different legal entities, even if they belong to the same group, are separate juridical persons, each one with its own assets, to meet its own liabilities".[25]

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[21] The relevant text in Spanish is as follows (pages 50 and 51): "…La sentencia ignora que el derecho mercantil enseña que un grupo de sociedades es un conjunto de empresas jurídicamente distintas sujetas a una dirección económica unitaria. Una responsabilidad global o una responsabilidad solidaria únicamente pueden ser establecidas por disposiciones legales expresas –que no existen en el derecho venezolano– o por una decisión judicial en un proceso en el cual se demuestre que la sociedad matriz o alguna otra sociedad del grupo se involucraron en los hechos que dan origen a la responsabilidad que la sentencia proclama… la doctrina del levantamiento del velo de la personalidad jurídica societaria únicamente se puede utilizar en casos de abuso de derecho, simulación ilícita o fraude. Ninguno de esos supuestos fue invocado en el caso decidido."

[22] Brewer-Caría, Allan R.: La ilegítima despersonalización de las sociedades, la ilegal distorsión del régimen de la responsabilidad societaria y la violación del debido proceso en la jurisprudencia de la Sala Constitucional de Venezuela, published by Academia de Ciencias Políticas y Sociales in Derecho de Grupos de Sociedades, Caracas, 2005, pages 91 to 129.

[23] The relevant text in Spanish is as follows (page 126): "En el caso decidido por la Sala Constitucional, si se puede efectivamente identificar un abuso, ello es en la utilización y generalización indiscriminada de la teoría del levantamiento del velo de la personalidad jurídica en que incurrió la Sala Constitucional, ignorando su carácter excepcional y la necesidad de que su aplicación siempre debe obedecer a una previsión expresa de la ley, dado que constituye una limitación al derecho constitucional de asociación y a la libertad económica."

[24] Acedo de Lepervanche, Luisa, and Acedo Sucre, Carlos Eduardo: Los Grupos de Sociedades desde la Óptica del Derecho de Obligaciones, published by Academia de Ciencias Políticas y Sociales in Derecho de Grupos de Sociedades, Caracas, 2005, pages 495 to 538.

[25] The relevant text in Spanish is as follows (pages 526 and 538): "…la Sala Constitucional invocó las excepciones existentes en diversas leyes para tratar de inducir una regla de carácter general…, aplicable, al menos, cuando una de las partes es calificable como débil jurídico. La sentencia, partiendo de dichas disposiciones legales excepcionales, afirma, como postulado general, que las obligaciones asumidas por cualquiera de los miembros de un grupo empresarial son obligaciones indivisibles, que pueden ser cobradas tanto al grupo como a cualquiera de sus miembros… El principio general así inventado por la Sala Constitucional contradice el principio general… expresado en varios artículos de nuestros códigos

4. In spite of these criticisms, the Constitutional Chamber confirmed the Saet Precedent in many decisions. For instance, the Constitutional Chamber, in a judgment rendered on July 10, 2008, in the case of Luis Ernesto Torre and Rafael Vargas against Banco Consolidado, C.A., now Corp Banca, C.A., pierced the corporate veil (the "**Consolidado Precedent**").[26] Indeed, the Constitutional Chamber, in the Consolidado Precedent, quoted verbatim a portion of and applied the Saet Precedent, in order to establish that local bank Banco Consolidado, C.A. was liable for debts incurred by foreign bank Banco Consolidado Aruba N.V. vis-à-vis the latter's account holders, namely Luis Ernesto Torre and Rafael Vargas, on the grounds that Banco Consolidado, C.A. and Banco Consolidado Aruba N.V. belonged to the same group of companies. The Constitutional Chamber, in the Consolidado Precedent, described as "paradigmatic" the Saet Precedent, with regard to "economic and financial groups".[27] This was not a labor case. The Constitutional Chamber, in the Consolidado Precedent, copied several parts of the Saet Precedent, and then established the following:

> "From the above, it follows, not only that economic or financial groups can be national or transnational, that is, may include persons incorporated in different countries, but also that, when there is an economic or financial group, what exists is not a joint liability, but an indivisible obligation of the group, which acts as an economic unity formed by several persons, because, in matters of public policy and social interest, as is the case with the financial system, the aim is to protect… the consumers' rights… and… society in general… In this regard, when faced with an economic unity, which cannot be avoided by the creation of the different legal entities that constitute an economic group, they cannot separate themselves from their responsibilities by showing themselves as separate legal entities, because, if, in the course of proceedings that involve public policy and social interest, the certainty arises that there are additional members of the group, other than the defendants, bound by an economic unity…, the judgment may apply to them also, even if they have not been mentioned as respondents or served, since, as members of this unity, they have knowledge of the group's obligation".[28]

Thus, the two banks mentioned in the Consolidado Precedent were deemed by the Constitutional Chamber to form a group of companies, in which each one was liable for the others' obligations, which were considered to be indivisible obligations of the group. In the Consolidado Precedent, the Constitutional Chamber annulled a judgment

civil y de comercio, según el cual las diferentes personas jurídicas, aunque pertenezcan a un mismo grupo, son sujetos de derecho diferentes, cada uno con su propio patrimonio, para responder de sus propias obligaciones."

[26] The Consolidado Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/julio/1107-100708-07-1601.htm

[27] The relevant text in Spanish is as follows: "resultan paradigmáticos en la sentencia de esta Sala Nº 903 del 14 de mayo de 2004, caso: *"Transporte Saet, C.A."*, en torno a los grupos económicos y financieros".

[28] The relevant text in Spanish is as follows: "De lo anterior se colige, no sólo que los grupos económicos o financieros puedan ser nacionales o trasnacionales, es decir, pueden abarcar a personas constituidas en diversos países, sino que entre el grupo económico o financiero no se trata de la existencia de una responsabilidad solidaria, sino de una obligación indivisible del grupo que actúa como una unidad económica entre varias personas, ya que en materia de orden público e interés social como es el sistema financiero, se persigue proteger… los derechos de los usuarios… y… la sociedad en general… En tal sentido, al encontrarnos frente a una unidad patrimonial que no puede ser eludida por la creación de diversas personas jurídicas, las cuales se constituyen como un grupo económico, no pueden apartarse de sus responsabilidades a través de la apariencia de ser personas jurídicas distintas, pues si en el curso de una causa donde está involucrado el orden público y el interés social, surge la certeza de que hay otros miembros del grupo formado por la unidad económica -tal como lo afirma el informe presentado por la Superintendencia de Bancos y Otras Instituciones Financieras, diferentes a los demandados-, la sentencia puede abarcar a éstos, así no hayan sido demandados, ni citados, puesto que como miembros integrantes de la unidad, conocen la obligación del grupo".

rendered by the Political Chamber, on the grounds, mainly, that the latter did not apply the Saet Precedent:

> "Therefore, the injury to the right to obtain an effective judicial protection is present from the moment the Political and Administrative Chamber of the Supreme Tribunal of Justice denied the defendant's liability without examining the principles contained in the judgments rendered by this Chamber under numbers 85/2002, case "Asodeviprilara", and 903/2004, case "Transporte Saet, C.A.", thereby ignoring the precedents of this Chamber in relation to corporate groups' global system of liability… It follows, therefore, that this Chamber concludes that it upholds the revision appeal against decision number 1157 issued by the Political and Administrative Chamber of the Supreme Tribunal of Justice on June 27, 2007, because it incurred in a constitutional violation… Consequently, this Chamber annuls decision number 1157 issued by the Political and Administrative Chamber of the Supreme Tribunal of Justice on June 27, 2007".[29]

The Consolidado Precedent is very important, because the Constitutional Chamber (i) applied the Saet Precedent to a non-labour claim, and (ii) lifted the corporate veil with respect to a group of companies that included a foreign company.

5. The Constitutional Chamber confirmed the Saet Precedent in many decisions, in addition to the Consolidado Precedent:

A. The Constitutional Chamber applied the Saet Precedent in a ruling issued on October 8, 2013, with respect to Denis Cayaurima Tortoza Oropeza's labor claim against C.A. La Electricidad de Caracas and Turbinas y Generadores, C.A., Turgenca (the "**Electricidad Precedent**"):[30]

> "[D]ecision Nº 903/14.05.2004 (Caso: *Transporte Saet, S.A.*)… interpretation of Article 89.1 of the Constitution of the Bolivarian Republic of Venezuela… it is a liability demanded from the economic group… any of the individuals or corporations that form the economic unity can be judicially condemned for the obligation assumed by any of its members… [T]his Chamber is of the opinion that the referred to joint liability has its cause in the indivisible obligation of the group, which acts as a unity".[31]

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[29] The relevant text in Spanish is as follows: "Por lo tanto, la lesión del derecho a una tutela judicial efectiva se encuentra presente desde el momento en que la Sala Político Administrativa del Tribunal Supremo de Justicia, negó la responsabilidad de la demandada sin entrar a analizar los supuestos contenidos en las sentencias de esta Sala Nros. 85/2002, caso: "Asodeviprilara" y 903/2004, caso: "Transporte Saet, C.A.", desconociendo la jurisprudencia de esta Sala en relación al sistema integral de responsabilidad de los grupos societarios… De ello resulta pues, que esta Sala concluya ha lugar la revisión del fallo Nº 1.157 dictado por la Sala Político Administrativa del Tribunal Supremo de Justicia el 27 de junio de 2007, debido a que el mismo generó una violación constitucional… En consecuencia, procede esta Sala a anular la sentencia Nº 1.157 dictada por la Sala Político Administrativa del Tribunal Supremo de Justicia, el 27 de junio de 2007".

[30] The Electricidad Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/octubre/157232-1299-81013-2013-12-0837.html

[31] The relevant text in Spanish is as follows:
"decisión Nº 903/14.05.2004 (Caso: *Transporte Saet, S.A.*)… interpretación del artículo 89.1 de la Constitución de la República Bolivariana de Venezuela… se trata de una responsabilidad exigida al grupo económico… pudiendo ser condenada judicialmente cualquiera de las personas naturales o jurídicas que conforman la unidad económica a la obligación asumida por cualquiera de sus integrantes.
…esta Sala es del criterio que la responsabilidad solidaria a la que se ha aludido tiene como causa la obligación indivisible del grupo, que actúa como unidad".

B. In the following decisions, the Constitutional Chamber confirmed the Saet Precedent, but did not apply it, since the interested party, during the procedure, did not invoke and prove the existence of the group:

a. The decision rendered by the Constitutional Chamber on October 17, 2014, in the labor litigation started by Mr. Carlos Javier Guerra against a company called Avelino Gomes Henriques, C.A. (the "**Gomes Precedent**"):[32]

> "In the present case, the Chamber considers that the request… is not backed with sufficient arguments and evidence...., since the claimant did not mention or prove, throughout the procedure, the existence of other jointly liable persons… based on this Chamber's jurisprudential construction on the theory of the piercing of the corporate veil…, the development of which started with the decision number 903 of May 14, 2004, case: *"Transporte Saet C.A."*"[33]

b. The decision rendered by the Constitutional Chamber on December 10, 2009, in the case of Jesús Manuel Sánchez Araque against Tasca El Monasterio, C.A. and Inversiones GH 2000, C.A. (the "**GH 2000 Precedent**"):[34]

> "[T]he legal system has established a joint liability with respect to duties and obligations regarding the concerted activity between legal entities, so it has recognized the existence of groups, the constitution of which may be determined following several criteria included in the laws themselves. As the units they are, it is possible for them to assume obligations that cannot be divided into parts, which correspond to the unity as a whole (*Vid*. Decision N° 903/14.05.2004 and N° 558/18.04.2001). Thus, there being an indivisible obligation or its equivalent, each of the group's members assumes and is bound for the total (Article 1254 of the Civil Code)"[35] (the Saet Precedent is decision N° 903/14.05.2004.)

c. The decision rendered by the Constitutional Chamber on September 30, 2009, in the case of George Kastner against Arthur D. Little de Venezuela C.A. (the "**Arthur D. Little Precedent**"):[36]

> "The undisputed and repeated doctrine of this Chamber has been that, when the existence of an economic group has been affirmed, the persons who allegedly

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[32] The Gomes Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/octubre/170102-1365-171014-2014-14-0850.html

[33] The relevant text in Spanish is as follows: "En el presente caso, la Sala considera que la solicitud… no cuenta con elementos argumentales y probatorios suficientes que hagan viable el ejercicio de su potestad extraordinaria de revisión sobre la sentencia…, por cuanto el actor no mencionó ni probó a lo largo del juicio la existencia de otros responsables solidarios… a partir de la propia construcción jurisprudencial de esta Sala sobre la teoría del levantamiento del velo corporativo…, desarrollado a partir de la sentencia número 903 del 14 de mayo de 2004, caso: *"Transporte Saet C.A."*"

[34] The GH 2000 Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/diciembre/1703-101209-2009-09-0219.HTML

[35] The relevant text in Spanish is as follows: "el ordenamiento jurídico ha señalado deberes y obligaciones solidarias a la actividad concertada entre personas jurídicas, por lo que ha reconocido a los grupos, los cuales pueden obedecer, en su constitución, a diversos criterios que las mismas leyes recogen. Como unidades que son, existe la posibilidad que asuman obligaciones que no pueden dividirse en partes, que corresponde a la unidad como un todo (*Vid*. sentencia N° 903/14.05.2004 y N° 558/18.04.2001). Por lo tanto, al existir una obligación indivisible o equiparable, cada uno de los miembros del grupo contrae y está obligado por la totalidad (artículo 1.254 del Código Civil)".

[36] The Arthur D. Little Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/septiembre/1201-30909-2009-08-1411.html

> form this group must be given the opportunity to exercise their right to defend themselves".[37]
>
> "[I]n a recent decision (*vide*., Constitutional Chamber N° 900/2009, July 6, case *Industria Azucarera Santa Clara C.A.*), this Chamber ratified the principle it established in decision N° 903/2004, May 14 (case *Transporte Saet C.A.*)"[38]

The case Industria Azucarera Santa Clara C.A., mentioned in the Arthur D. Little Precedent, was decided by the Constitutional Chamber on July 6, 2009, with respect to the claim of Wladimir Troya La Cruz against Central Azucarero Las Majaguas C.A. and Industria Azucarera Santa Clara C.A. (the "**Industria Azucarera Santa Clara Precedent**").[39]

d. The decision rendered by the Constitutional Chamber on April 25, 2012, rejecting the constitutional protection requested by Valores Abezur C.A. against a judgment rendered by a labor court of appeals in favor of the estate of an employee of Mr. Moisés Udelman (the "**Abezur Precedent**"):[40]

> "[M]embers of an economic group may be condemned, even if they are not the defendants and have not been served, provided there is unequivocal proof of it".[41]

In the Abezur Precedent, the Constitutional Chamber annulled a judgment rendered by a labor court of appeals for the following reason:

> "It even issued such decision ignoring the criterion established by this Constitutional Chamber in ruling Nº 903 dated May 14 2004 (Case *Transporte Saet C.A.*)".[42]
>
> "[A] judgment may be enforced against a group that has not been mentioned if there is evidence of its existence".[43]

6. The other chambers of the Supreme Tribunal have repeatedly confirmed the Saet Precedent. For instance, the Social Chamber, which specializes in labor law disputes, pierced or approved the piercing of the corporate veil in the following cases:

A. The Social Chamber applied the Saet Precedent in the decision rendered on December 12, 2008, in the case of Flor María Amaya Correa against Fospuca, C.A.,

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[37] The relevant text in Spanish is as follows: "Ha sido doctrina pacífica y reiterada de esta Sala que, cuando se alegue la existencia de un grupo económico, debe darse la oportunidad, a quienes supuestamente conforman dicho grupo, para que ejerzan el derecho a la defensa".
[38] The relevant text in Spanish is as follows: "en reciente decisión (*vide.,* s.S.C. n.° 900/2009, de 6 de julio, caso: *Industria Azucarera Santa Clara C.A.*), esta Sala ratificó la doctrina que asentó en decisión n.° 903/2004, de 14 de mayo (caso: *Transporte Saet C.A.*)".
[39] The Industria Azucarera Santa Clara Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/julio/900-6709-2009-09-0315.HTML
[40] The Abezur Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/abril/523-25412-2012-10-0786.html
[41] The relevant text in Spanish is as follows: "se puede condenar a miembros de un grupo económico, aun cuando no hayan sido demandados ni citados, siempre que hayan pruebas inequívocas de ello".
[42] The relevant text in Spanish is as follows: "Tal decisión, la efectuó incluso desatendiendo el criterio emanado de esta Sala Constitucional en sentencia Nº 903 de fecha 14 de mayo de 2004 (Caso: *Transporte Saet C.A.*)".
[43] The relevant text in Spanish is as follows: "se trata de una "*excepción*", según la cual, se puede ejecutar una sentencia contra un grupo aunque no se haya mencionado, siempre y cuando se logre demostrar su existencia".

Fospuca Libertador, Proactiva Libertador, C.A. and Fospuca Baruta, C.A. (the "**Fospuca Precedent**").[44] The Fospuca Precedent establishes the following:

> "[T]he Constitutional Chamber of this Highest Court has pointed out that groups of companies have indivisible obligations, and that any one of them can be condemned for the obligation assumed by one of the members of such group. In this sense, the decision N° 903 issued by such Chamber on May 14, 2004, Case *Transporte Saet*, is quoted".[45]

B. The Social Chamber applied the Saet Precedent in a labor litigation is the decision issued on June 1, 2006, in the case of Olga Margarita Pérez de Salazar and Julian Antonio Salazar Alvarado against Aerovías Venezolanas, S.A. (Avensa) and Empresas Avensa (Empreavensa), S.A. (the "**Avensa Precedent**").[46] The Avensa Precedent establishes the following:

> "[E]conomic groups… groups' liability… Being a unity, there is the possibility that they assume obligations that cannot be divided in parts, which correspond to the unity as a whole (Judgement N° 903 of May 14, 2004. Case: Transporte Saet, S.A…)
>
> Thus, the Constitutional Chamber expresses that, as there is an indivisible obligation or its equivalent, each of the members of the group assumes and is bound by the whole (Article 1254 of the Civil Code)".[47]

C. The Social Chamber applied the Saet Precedent in the decision issued on September 26, 2013, in the labor case of Herbert Cerqueira De Souza against Moore de Venezuela, S.A. (formerly Formularios y Procedimientos Moore, S.A.) and R.R. Donnelley Holdings Venezuela, S.A. (the "**Moore Precedent**").[48] The Moore Precedent establishes the following:

> "The Constitutional Chamber, in its decision N° 903, dated July 11 of the year 2001 (sic), in the case TRANSPORTE SAET, S.A., established that the criterion of economic unity should be viewed considering the unity of assets or businesses, which is presumed when there is an identity between the shareholders or owners engaged in the administration or management of at least two companies...; or when a group of companies or companies with the same owners undertake the operation of industrial, commercial or financial businesses, in a volume that constitutes their main source of income".[49]

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[44] The Fospuca Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scs/diciembre/2116-121208-2008-08-548.HTML

[45] The relevant text in Spanish is as follows: "la Sala Constitucional de este Máximo Tribunal, ha señalado que los grupos de empresa tienen obligaciones indivisibles y que se puede condenar a cualquiera de ellas a la obligación asumida por una de las que conforme dicho grupo. En tal sentido, se cita lo sostenido en la sentencia N° 903 proferida por la citada Sala en fecha 14 de mayo de 2004, Caso *Transporte Saet*."

[46] The Avensa Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scs/junio/0888-010606-051044.htm

[47] The relevant text in Spanish is as follows:
"grupos económicos… responsabilidad grupal… Como unidades que son, existe la posibilidad que asuman obligaciones que no pueden dividirse en partes, que corresponde a la unidad como un todo (Sentencia N° 903 de 14 de mayo de 2004. Caso: Transporte Saet, S.A…)".
De manera que la Sala Constitucional expresa que al existir una obligación indivisible o equiparable, cada uno de los miembros del grupo contrae y está obligado por la totalidad (artículo 1.254 del Código Civil)".

[48] The Moore Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scs/septiembre/156985-0788-26913-2013-11-897.html

[49] The relevant text in Spanish is as follows: "La Sala Constitucional en sentencia N°903, de fecha 11 de julio del año 2001 (sic), en el caso TRANSPORTE SAET, S.A., estableció que el criterio de la unidad económica, debe enfocarse desde la unidad patrimonial o de negocios y que se presume cuando hay

D. The Social Chamber mentioned the Saet Precedent in many other rulings, for instance, in (i) a decision rendered on December 14, 2015, in the case of Fabio Ernesto Bramanti Ostilla, Nicolás Valera Stachowsky and Carl Henrik Gustaf Edlund Brewer against Stanford Group Venezuela Asesores de Inversión, C.A. and Banco Nacional De Crédito, C.A. Banco Universal (the "**Stanford Precedent**");[50] and (ii) a decision rendered on December 13, 2017, in the case of Guillermo Contreras Useche against Francisco Ortisi Passanisi, Avencatun, S.A., Atumar, S.A. and Atuneros del Occidente de Venezuela, C.A. (Atovenca) (the "**Atumar Precedent**").[51] The relevant parts of the Stanford Precedent and the Atumar Precedent are identical. In both of them, the Social Chamber quoted extensively the Saet Precedent, and concluded that, when there is a group of companies, their obligations are indivisible, so the creditor can collect the debt from any of the members of this group.[52]

7. The Civil Chamber, which specializes in civil and commercial disputes, has also confirmed the Saet Precedent:

A. The Civil Chamber affirmed the Saet Precedent in a decision rendered on June 2, 2009, in the case of Félix del Carmen Jirón, Apolinar Aragón, Miguel De Los Santos Arbizú C. and others against Shell Chemical Company, Dole Food Company, Inc. and Dow Chemical Company (the "**Shell Precedent**").[53] The Civil Chamber, in the Shell Precedent, quoted the Saet Precedent, but decided not to apply it in this particular case, on the grounds that the interested party required the exequatur of a foreign court decision in order to enforce it in Venezuela, but such foreign court decision did not mention that said companies form a group. This was a case in which Félix del Carmen Jirón, Apolinar Aragón, Miguel De Los Santos Arbizú C. and others claimed damages in Nicaragua against Shell Chemical Company, Dole Food Company, Inc. and Dow Chemical Company, and obtained a decision against them, which they tried to enforce in Venezuela against Dow Venezuela, C.A. The Civil Chamber refused to consider Dow Venezuela, C.A. as a party to the exequatur procedure, since it was not mentioned in the Nicaraguan decision.

B. A very similar decision was rendered by the Civil Chamber on October 23, 2009, in the case of Mariano de Jesús Torres Romero, Orlando Rodríguez Pineda and others against Shell Chemical Company, Dole Food Company, Inc. and Dow Chemical Company (the "**Second Shell Precedent**").[54] The Civil Chamber, in the Second Shell Precedent, quoted verbatim a portion of the Saet Precedent; but decided not to apply it in this particular case, on the grounds that the interested party required the exequatur of a foreign court decision in order to enforce it in Venezuela, and such foreign court decision did not mention that said companies form a group.

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identidad entre accionistas o propietarios que ejerzan la administración o dirección de, al menos, dos empresas…; o cuando se dé la explotación de negocios industriales, comerciales o financieros, por un conjunto de compañías o empresas en comunidad, en volumen que constituya la fuente principal de sus ingresos."

[50] The Stanford Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scs/diciembre/183951-1225-141215-2015-14-413.html

[51] The Atumar Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scs/diciembre/206525-1262-131217-2017-15-253.html

[52] The relevant text in Spanish is as follows: "De los criterios jurisprudenciales expuestos, se extrae con particular connotación que son ostensibles los efectos fundamentales de la simbiosis empresarial derivaba (sic) del concepto doctrinalmente acuñado como "*grupo de empresas*", que comporta una solidaridad que acarrea a sus componentes obligaciones indivisibles, pudiéndose condenar a cualquiera de ellas, y con el pago tan solo de una, basta para satisfacer la deuda."

[53] The Shell Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scc/junio/exeq.00303-2609-2009-04-674.html

[54] The Second Shell Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scc/octubre/exeq.00583-231009-2009-04-475.html

C. On November 6, 2014, the Civil Chamber issued a decision in the case of Tecnoconsult, S.A. against Thyssenkrupp Robins, Inc. (TKR) and PWH Material Handling Systems, Inc. (the "**Tecnoconsult Precedent**"). [55] In the Tecnoconsult Precedent, the Civil Chamber mentioned the Saet Precedent, but did not apply it, because Tecnoconsult, S.A. offered to pay a debt under the *oferta real y depósito* procedure, but did not comply with the requirements to make such offer. What is more interesting in the Tecnoconsult Precedent is the dissenting vote, issued by Civil Chamber Judge Isbelia Pérez Velásquez on November 6, 2014 (the "**Tecnoconsult Dissenting Vote**"). [56] The Tecnoconsult Dissenting Vote is similar to the Saet Dissenting Vote, because the Tecnoconsult Dissenting Vote states that several special rules establish the piercing of the corporate veil, and that these special rules can only be applied to the specific situations for which they were enacted.[57] The Saet Precedent, on the contrary, states that the special rules that allow piercing the corporate veil are manifestations of a general principle, of constitutional ranking, which applies to any group of companies; and this assertion led to the Saet Dissenting Vote.

D. The Civil Chamber referred to the piercing of the corporate veil in a decision rendered on June 22, 2016, in the case of Alberto José Villasmil Léanos and Tania Patricia Lacera Herrera against Transporte Rincón Valero Compañía Anónima, Cervecería Modelo Compañía Anónima and Seguros La Seguridad Compañía Anónima (the "**First Transporte Rincón Precedent**"). [58] In this case, the plaintiffs invoked the Saet Precedent. The First Transporte Rincón Precedent establishes that judges must take into account certain facts, which allow piercing the corporate veil, such as ownership, control or any element that may lead to the conclusion that the companies are not independent.[59] The plaintiffs objected to the First Transporte Rincón Precedent, because they did not agree with the amount of damages granted to them. The Constitutional Chamber annulled the First Transporte Rincón Precedent, in a judgement rendered on

[55] The Tecnoconsult Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scc/noviembre/171055-rc.000678-61114-2014-13-811.html

[56] The Tecnoconsult Dissenting Vote was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scc/noviembre/171055-rc.000678-61114-2014-13-811.html

[57] The relevant text in Spanish is as follows:

"…la aplicación de las doctrinas que desarrollan las teorías de "grupos de sociedades" así como la del "levantamiento del velo corporativo o societario" y con estas la del desconocimiento de la personalidad jurídica de las personas morales, son de interpretación restrictiva, es decir, que si bien desde una construcción doctrinaria y jurisprudencial han tenido cabida en los casos laborales, fiscales y de otros derechos públicos e inclusive en casos civiles o mercantiles, están reservadas solamente cuando la norma legal expresa así lo autorice, o donde se acredite la existencia de abuso de derecho, fraude a la ley o simulación en la utilización de la personalidad jurídica, formulada con una intención inicial en ese sentido, o luego, para evadir responsabilidades en perjuicio de sus acreedores, que en definitiva pretendan transgredir derechos sociales o de orden público.

Lo anteriormente expresado, pone de manifiesto que lejos de esos particulares previstos en las circunstancias excepcionales prenombradas, no está contemplado que se desconozca la personalidad jurídica propia e independiente de las sociedades de comercio y demás personas morales, pues, el objetivo de esta extraordinaria labor es procurar una sana administración de justicia, guiada por valores superiores que lo justifiquen o por una norma expresa que lo establezca; todo ello de conformidad con los principios y postulados de nuestra Carta Fundamental.

…la Sala no evidenció que se haya alegado y demostrado abuso de derecho, fraude a la ley o simulación en la utilización de la personalidad jurídica, capaces de subvertir algún derecho social o de orden público, en perjuicio de persona alguna".

[58] The First Transporte Rincón Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scc/junio/188453-RC.000381-22616-2016-15-679.HTML

[59] The relevant text in Spanish is as follows: "Atender a ciertos hechos indiciarios que permitan establecer la procedencia del levantamiento del velo corporativo, como por ejemplo cuando se verifique una o más sociedades donde una de ellas tenga un solo socio, el control de una de las empresas sobre otra u otras, la insuficiencia del capital social, la no producción de dividendos, la ausencia de giro independiente, el control accionario entre dos o más empresas del grupo, el funcionamiento en establecimientos comunes y dependientes unos de otros, la confusión patrimonial, cuando existan contratos conexos o enlazados por el objeto o por la causa; En fin todos aquellos elementos que puedan conllevar a deducir la falta de independencia de una o varias de las sociedades frente a otra empresa o persona natural."

August 11, 2017 (the "**Second Transporte Rincón Precedent**").[60] The Second Transporte Rincón Precedent establishes, however, that the First Transporte Rincón Precedent correctly pierced the corporate veil.[61]

8. The Political Chamber, which specializes in disputes in which the public sector is involved, has likewise confirmed the Saet Precedent, in its decision of October 28, 2014, in the case of Wenco Servicios de Comida Rápida, C.A. against the Bolivarian Republic of Venezuela, through the Ministry of Popular Power for Commerce (the "**Wenco Precedent**").[62] The Wenco Precedent established the following:

> "The Constitutional Chamber issued an extensive pronouncement on this matter, establishing the criterion that currently prevails, in the decision N° 903 dated May 14, 2004 (Case Transporte Saet, S.A.)".[63]

9. Regarding the court decisions confirming the Saet Precedent, José Antonio Muci Borjas wrote the following:[64]

> "Unfortunately, the ruling that decided Transporte Saet, C.A. is not an isolated decision. The principle therein established has been ratified through many court decisions".[65]

10. As stated above, Article 335 of the Constitution states that certain decisions issued by the Constitutional Chamber regarding interpretation of constitutional rules or principles are binding. This constitutional provision was invoked by the Constitutional Chamber in the four following judgments, in which it ratified the Saet Precedent: the Electricidad Precedent, the Industria Azucarera Santa Clara Precedent, the Arthur D. Little Precedent and the Abezur Precedent.

Similarly, the GH 2000 Precedent, which also ratified the Saet Precedent, refers to the Constitutional Chamber's role, as follows:

> "[T]o ensure and guarantee the supremacy and effectiveness of constitutional rules and principles, in order to safeguard the uniform interpretation of fundamental precepts, as well as the binding jurisprudence of the Constitutional Court on direct interpretation of the Constitution and on the preservation of legal certainty".[66]

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[60] The Second Transporte Rincón Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/scon/agosto/202787-606-11817-2017-17-0558.html

[61] The relevant text in Spanish is as follows: "Como puede observarse de la lectura de la decisión cuya revisión ha sido solicitada, la Sala de Casación Civil acertadamente falló a favor de los hoy solicitantes, en torno a estimar procedente que, en efecto existe una responsabilidad solidaria entre todas las empresas codemandadas, modificando la decisión de instancia que había declarado procedente la falta de cualidad alegada por la empresa Cervecería Modelo, C.A., excluyéndola de la relación procesal propuesta inicialmente.".

[62] The Wenco Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/spa/octubre/170780-01462-291014-2014-2012-1454.HTML

[63] "The relevant text in Spanish is as follows: Sobre este punto se ha pronunciado *in extenso* la Sala Constitucional, fijando el criterio actualmente imperante en la sentencia N° 903 dictada el 14 de mayo de 2004, (caso: Transporte Saet, S.A.)".

[64] Muci Borjas: op. cit.

[65] The relevant text in Spanish is as follows: "Lamentablemente, el fallo que decidió Transporte Saet, C.A. no es una decisión aislada. El criterio que en él se sentó ha sido ratificado a través de numerosas decisiones judiciales".

[66] The relevant text in Spanish is as follows: "velar y garantizar la supremacía y efectividad de las normas y principios constitucionales, a los fines de custodiar la uniformidad en la interpretación de los preceptos fundamentales, además de la jurisprudencia vinculante de la Sala Constitucional en interpretación directa de la Constitución y en resguardo de la seguridad jurídica".

11. The Consolidado Precedent, the Industria Azucarera Santa Clara Precedent, the GH 2000 Precedent and the Gomes Precedent include the following text from the Saet Precedent:

> "[A]n indivisible obligation that arises from the existence of groups".[67]

12. The Constitutional Chamber, in the Saet Precedent, established that there is no need to prove the existence of the group, in order to pierce the corporate veil, whenever a law establishes that a group of companies undertakes a certain activity regulated in such law:

> "[I]t is necessary to claim the existence of the group, its conformation and inexorably point out which of its components has not complied, which is the reason why in the final judgment the corporate veil of legal personality of the group is pierced and the liability of other member or members is determined… The evidence on the existence of the group… allows the judge to condemn… The principle above… suffers an exception in matters of public policy, **when the law indicates an obligation –or an activity– that must correspond as a whole to the group**"[68] (emphasis added).

Thus, the principle according to which the interested party must claim and prove in the trial that there is a group does not apply when there is a law that recognizes the existence of a group or orders establishing a group. This is the case of PDVSA and its Affiliates.

13. PDVSA and its Affiliates were created under the old Law that Reserves to the State the Industry and Commerce of Hydrocarbons. PDVSA was incorporated by a presidential decree published in Official Gazette number 1770 of August 30, 1975, which includes PDVSA's original bylaws, which in turn were filed in the Commercial Registry. Successive amendments of PDVSA's bylaws were published in Official Gazettes numbers 37.236 of July 10, 2001, 37.588 of December 10, 2002, 38.081 of December 7, 2004, 38.988 of August 6, 2008, 39.681 of May 25, 2011, etc., and filed in the Commercial Registry. The PDVSA group and its activity are currently regulated by the Hydrocarbons Organic Law (the "**Hydrocarbons Law**"). PDVSA's governing bodies, according to all the successive versions of its bylaws and the Commercial Code, are its shareholders meeting and the board of directors. The board of directors' functions include the following, pursuant to PDVSA's bylaws:

> "To control and supervise the activities of the affiliated companies and, especially, to monitor the compliance of its decisions".[69]

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[67] The relevant text in Spanish is as follows: "una obligación indivisible que nace por la existencia de los grupos".

[68] The relevant text in Spanish is as follows: "Cuando no se ha demandado al grupo económico como tal ¿puede condenarse a alguno de sus miembros, no demandado ni citado?. Conforme a los principios contenidos en el artículo 12 del Código de Procedimiento Civil…, es necesario alegar la existencia del grupo, su conformación, e inexorablemente señalar cuál de sus componentes ha incumplido, motivo por el cual en la sentencia definitiva se levanta el velo de la personalidad jurídica al grupo y se determina la responsabilidad del otro u otros miembros que, teniendo una personalidad jurídica propia, no mantuvo o mantuvieron una relación jurídica con el demandante… Las pruebas sobre la existencia del grupo… permiten al juez condenar… a la unidad formada por todos los miembros… El principio anterior… sufre una excepción en materia de orden público, cuando la ley señala una obligación –o una actividad– que debe corresponder en conjunto al grupo".

[69] The relevant text in Spanish is as follows: "Controlar y supervisor las actividades de las sociedades afiliadas y en especial, vigilar que cumplan sus decisiones".

14. The Republic acts, in the case of PDVSA and its Affiliates, through the Minister. Articles 29 and 30 of the Hydrocarbons Law provide, respectively, the following, which applies to the relationship between the Minister, and PDVSA and its Affiliates:

> "The State petroleum companies shall be ruled by this Law and its Regulations, by their own bylaws, by the provisions issued by the National Executive by organ of the Ministry of Energy and Petroleum, and by the applicable general provisions of the law".[70]

> "The National Executive, by organ of the Ministry of Energy and Petroleum, shall have the authority to inspect and monitor the State petroleum companies and their subsidiaries, both within the national territory and internationally, and shall issue the guidelines and the policies that must be complied with in the matters referred to in this Law".[71]

15. The first part of Article 302 and the first part of Article 303 of the Constitution provide the following:

> "The State reserves to itself, by means of the corresponding organic law, and for reasons of national convenience, the petroleum activity and other industries, exploitations, services and goods of public interest".[72]

> "For reasons of economic and political sovereignty and of national strategy, the State shall keep the totality of the shares of Petróleos de Venezuela, S.A. [PDVSA]".[73]

16. Thus, pursuant to the Constitution and the Hydrocarbons Law, the PDVSA group is formed by PDVSA, whose only shareholder is the Republic, and the PDVSA subsidiaries; and all these companies are subject to the Minister's control. Accordingly, PDVSA and its Affiliates are jointly liable under the Saet Precedent.

17. Further, the Saet Precedent applies to the PDVSA group because it defines the typical group of companies as follows, which, for the reasons above, is a perfect description of PDVSA and its Affiliates:

> "The unity in administration or decision-making that links the parent company with other businesses or companies… is what characterizes the group, which may be formed… by a controlling company… and the subordinated companies or businesses".[74]

In addition, the Saet Precedent mentions certain criteria that may be used to identify a group of companies (other than having a law that provides that an obligation is owed by

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[70] The relevant text in Spanish is as follows: "Las empresas petroleras estatales se regirán por esta Ley y su Reglamento, por sus propios estatutos, por las disposiciones que dicte el Ejecutivo Nacional por órgano del Ministerio de Energía y Petróleo, y por las de derecho común que les sean aplicables".

[71] The relevant text in Spanish is as follows: "El Ejecutivo Nacional por órgano del Ministerio de Energía y Petróleo, ejercerá las funciones de inspección y fiscalización de las empresas petroleras estatales y sus filiales, tanto en el ámbito nacional como en el internacional y dictará los lineamientos y las políticas que deben cumplirse sobre las materias a que se refiere esta ley".

[72] The relevant text in Spanish is as follows: "El Estado se reserva, mediante la ley orgánica respectiva, y por razones de conveniencia nacional, la actividad petrolera y otras industrias, explotaciones, servicios y bienes de interés público".

[73] The relevant text in Spanish is as follows: "Por razones de soberanía económica, política y de estrategia nacional, el Estado conservará la totalidad de las acciones de Petróleos de Venezuela, S.A.".

[74] The relevant text in Spanish is as follows: "La unidad de gestión o decisión que vincula a otras empresas o a sociedades con la compañía matriz… es lo que caracteriza al grupo, que puede estar conformado… por una sociedad controlante…, y por las sociedades o empresas subordinadas".

a group or that an activity is undertaken by a group, which, as stated above, releases the interested party from the burden of proof regarding the group's existence). For the reasons explained in the preceding paragraphs, all of the following criteria, taken from the Saet Precedent, apply to the PDVSA group:

> "[C]ontrol of a person over another one".[75]
>
> "The economic unity criterion, which is focused considering the unity in the patrimony or the businesses and that is presumed when there is an identity between shareholders or owners, who undertake the management or direction of at least two companies; or when a group of companies or businesses undertake, or exploit in common, related industrial, commercial or financial businesses, in a volume that constitutes their main source of income".[76]
>
> "The significant influence criterion, which consists in the capacity of the financial institution or the corporate investor to affect in an important degree the operational and financial practices of another financial institution or company, of which it owns shares or voting rights".[77]
>
> "[A] group of legal entities that reiteratively act in concert";[78]
>
> "[T]here must be a person who controls";[79]
>
> "This control or direction can be direct, as evidenced in an objective common management; or can be indirect, practiced clearly or through intermediaries";[80]
>
> "[T]here are opportunities in which the existence of the controlling person must be presumed, without the need to identify the controlling person… different criteria allow to infer the existence of a group of companies without the need to determine who controls them, for instance, when several persons use the same name (adding or including a word that formally distinguishes one legal entity from the other), or when there is a situation of shareholding control of a company over another and the direction bodies of each of them are formed –in a significant proportion– by the same persons";[81]

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[75] The relevant text in Spanish is as follows: "control de una persona sobre otra".
[76] The relevant text in Spanish is as follows: "El criterio de la unidad económica, el cual se enfoca desde la unidad patrimonial o de negocios y que se presume cuando hay identidad entre accionistas o propietarios que ejerzan la administración o dirección de, al menos, dos empresas; o cuando un conjunto de compañías o empresas en comunidad realicen o exploten negocios industriales, comerciales o financieros conexos, en volumen que constituya la fuente principal de sus ingresos".
[77] The relevant text in Spanish is as follows: "El criterio de la influencia significativa, que consiste en la capacidad de una institución financiera o empresa inversora para afectar en un grado importante, las políticas operacionales y financieras de otra institución financiera o empresa, de la cual posee acciones o derecho a voto".
[78] The relevant text in Spanish is as follows: "un conjunto de personas jurídicas que obran concertada y reiterativamente".
[79] The relevant text in Spanish is as follows: "es necesario que exista un controlante".
[80] The relevant text in Spanish is as follows: "Ese control o dirección puede ser directo, como se evidencia de una objetiva gerencia común; o puede ser indirecto, practicado diáfanamente o mediante personas interpuestas.
[81] The relevant text in Spanish is as follows: "hay oportunidades en que debe presumirse la existencia del controlante, sin necesidad de identificarlo… diversos criterios que permiten inferir la existencia de un grupo de empresas sin necesidad de determinar al controlante, por ejemplo, cuando varias personas jurídicas utilizan una misma denominación social (añadiendo o suprimiendo una palabra que, formalmente, la distinga como otra persona jurídica), o cuando existiere una situaciónde dominio accionario de una sociedad sobre otra y los órganos de dirección de cada una de ellas estuvieren conformados –en una proporción significativa– por las mismas personas".

> "The controlled entities follow orders from the controlling entities. The unity of direction, management or common administration results from this".[82]

Since the Saet Precedent clearly applies to the PDVSA group, it follows that the corporate veil can be pierced with regard to PDVSA and its Affiliates.

18. The Supreme Tribunal has applied the principles of the Saet Precedent to PDVSA and its Affiliates. For instance, the Social Chamber rendered a judgment on April 16, 2013, in the labor case of Marco Tulio Acosta Ferrer against PDVSA (the "**Acosta Precedent**").[83] In this case, PDVSA had presented a defense according to which it had no standing, since Marco Tulio Acosta Ferrer worked for PDVSA Petróleo, S.A. ("**PDVSA Petróleo**"), another subsidiary of the group, and not for PDVSA, which is a different legal entity. This defense was rejected by a court of appeals; so PDVSA presented a cassation appeal to the Social Chamber, which ratified the court of appeals' decision. The court of appeals' decision to reject PDVSA's lack of standing defense is described as follows by the Social Chamber in the Acosta Precedent:

> "The appealed decision rejected the lack of standing defense presented by the defendant, on the grounds that the commercial company PDVSA Petróleo S.A, is a subsidiary of Petróleos de Venezuela, S.A., and that the latter is the only shareholder of PDVSA Petróleo, S.A., and since **such companies constitute an economic group**… the citizen Marco Tulio Acosta Ferrer could claim his severance payments and other labor benefits both from the company Petróleos de Venezuela S.A., and from PDVSA Petróleo, S.A."[84] (emphasis added).

As stated above, PDVSA presented a cassation appeal. In the Acosta Precedent, the Social Chamber confirmed the decision of the court of appeals, establishing the following:

> "It is thus evidenced that, even though the commercial company PDVSA Petróleo, S.A. and the commercial company Petróleos de Venezuela, S.A. are separate legal entities, the commercial company PDVSA Petróleo, S.A. is a subsidiary of Petróleos de Venezuela, S.A., and that the commercial company Petróleos de Venezuela, S.A. is the only shareholder of PDVSA Petróleo, S.A…, that is, **the commercial company PDVSA Petróleo, S.A., and Petróleos de Venezuela, S.A., constitute an economic unity**"[85] (emphasis added).

19. In addition, there is the decision issued by the Political Chamber on June 3, 2008, in the case of Lilliam García Rivero against PDVSA (the "**García Precedent**").[86] The

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[82] The relevant text in Spanish is as follows: "Los controlados siguen órdenes de los controlantes. De allí, la unidad de dirección, gestión, o gerencia común."

[83] The Acosta Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gov.ve/decisiones/scs/abril/0187-16413-2013-12-590.HTML

[84] The relevant text in Spanish is as follows: "La recurrida declaró sin lugar la defensa de falta de cualidad opuesta por la demandada, bajo el fundamento de que la sociedad mercantil PDVSA Petróleo S.A, es una filial de Petróleos de Venezuela, S.A., así como que ésta es la única accionista de PDVSA Petróleo, S.A., y que por conformar dichas empresas un grupo económico… podía el ciudadano Marco Tulio Acosta Ferrer, reclamar el pago de sus prestaciones sociales y demás conceptos laborales tanto a la empresa Petróleos de Venezuela S.A., como a PDVSA Petróleo, S.A."

[85] The relevant text in Spanish is as follows: "Así pues, se evidencia que si bien la sociedad mercantil PDVSA Petróleo, S.A., y la sociedad mercantil Petróleos de Venezuela, S.A., tienen personalidad jurídica distintas, la sociedad mercantil PDVSA Petróleo, S.A., es filial de Petróleos de Venezuela, S.A., así como que la empresa Petróleos de Venezuela, S.A., es la única accionista de PDVSA Petróleo, S.A…, es decir, que la sociedad mercantil PDVSA Petróleo, S.A., y Petróleos de Venezuela, S.A., constituyen una unidad económica."

[86] The García Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/spa/junio/00683-4608-2008-1998-15113.HTML

Political Chamber, in the García Precedent, ruled that the fees under a legal services agreement between attorney Lilliam García Rivero and PDVSA Petróleo covered legal services provided by her to PDVSA, because, even though PDVSA and PDVSA Petróleo are different legal entities, they belong to the same group. The Political Chamber, in the García Precedent, stated that the Political Chamber's auxiliary court (*Juzgado de Sustanciación*), in a judgment appealed by Lilliam García Rivero, "considered that, even though the subsidiaries are clearly different from the parent company, they are linked, not only by economic ties, but also by their direction, being subject to the guidelines of the parent or holding company".[87] The Political Chamber confirmed such judgment, rejected said appeal and stated the following, in the García Precedent:

> "[F]rom the agreement entered into between the attorney and the commercial company PDVSA Petróleo, S.A., subsidiary of Petróleos de Venezuela, S.A. (PDVSA), clearly derives the economic linkage between both companies… Lilliam García Rivero's judicial acts representing Petróleos de Venezuela, S.A., are included in the agreement entered into between such attorney and the company PDVSA Petróleo, S.A.".[88]

20. The García Precedent was confirmed in a judgment rendered by the Political Chamber on March 6, 2012, in the case of Corpomedios G.V. Inversiones, C.A., Globovisión Tele, C.A. and others against Comisión Nacional de Telecomunicaciones, CONATEL (the "**Globovisión Precedent**").[89] The Political Chamber, in the Globovisión Precedent, confirmed the García Precedent, in order to treat Corpomedios G.V. Inversiones, C.A. and Globovisión Tele, C.A. as a unity, since they form a group of companies. The Globovisión Precedent repeated, among others, the text of the García Precedent that refers to "the economic linkage between" PDVSA and PDVSA Petróleo". Afterwards, the Political Chamber, in the Globovisión Precedent, declared the following:

> "[E]ven though the administrative procedure was started against the company Corpomedios G.V. Inversiones, C.A., it also covers the company Globovisión Tele, C.A., since both companies form a group of companies, which, in principle, is bound, as a whole, to comply with all the obligations acquired by its different members".[90]

21. The Acosta Precedent, the García Precedent and the Globovisión Precedent do not mention the Saet Precedent, but they apply the same principles. In the words of the Acosta Precedent, PDVSA and its Affiliates "constitute an economic unity", and, in the words of the García Precedent and the Globovisión Precedent, they are joined by an "economic linkage". PDVSA and its Affiliates are subject to the general provisions of the law, including, of course, the Saet Precedent. Indeed, as stated in paragraph 62, they

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[87] The relevant text in Spanish is as follows: "el Juzgado de Sustanciación consideró que aun cuando las empresas filiales son ciertamente distintas a la principal, se encuentran vinculadas no sólo por lazos económicos, sino de dirección, estando sometidas a los lineamientos de la principal o matriz."

[88] The relevant text in Spanish is as follows: "del contrato celebrado por la abogada con la sociedad mercantil PDVSA Petróleo, S.A., filial de Petróleos de Venezuela, S.A. (PDVSA), deriva claramente la vinculación económica de ambas empresas… las actuaciones judiciales realizadas por la abogada Lilliam García Rivero en representación de Petróleos de Venezuela, S.A., están comprendidas en el contrato suscrito entre la prenombrada abogada y la empresa PDVSA Petróleo, S.A."

[89] The Globovisión Precedent was consulted in the Supreme Tribunal's web page: http://historico.tsj.gob.ve/decisiones/spa/marzo/00165-6312-2012-2012-0051.HTML

[90] The relevant text in Spanish is as follows: "si bien el procedimiento administrativo fue iniciado contra la empresa Corpomedios G.V. Inversiones, C.A., éste engloba a la sociedad mercantil Globovisión Tele, C.A., por conformar ambas empresas un grupo societario que, en principio, estaría obligado a cumplir como un todo las obligaciones adquiridas por sus diferentes componentes".

are subject to Article 29 of the Hydrocarbons Law, which provides the following, which applies to PDVSA and its Affiliates:

> "The State petroleum companies shall be ruled by this Law and its Regulations, by their own bylaws, by the provisions issued by the National Executive by organ of the Ministry of Energy and Petroleum, **and by the applicable general provisions of the law**"[91] (emphasis added).

CONCLUSION. Under current Venezuelan law, the corporate veil between entities of the same group can be pierced by establishing the relationship between them; so the corporate veil between PDVSA and its Affiliates can be pierced by establishing that the Republic owns PDVSA, which in turn owns its Affiliates, all of whom are controlled directly or indirectly by the Minister. The Constitution and the Hydrocarbons Law require this ownership and control. At the present time, to pierce the corporate veil, there is no need to establish a fraud against the group of companies' creditors or any other illegality. It follows that that there is no need to establish that PDVSA, its Affiliates or the Republic incurred in an abuse of power or any other illicit behavior. Under Venezuelan law, as the Supreme Court and other courts currently and constantly apply it, judges can lift the corporate veil merely because PDVSA and its Affiliates belong to a group of companies owned and controlled by the Republic. This has been the case since the year 2004, when the Constitutional Chamber, exercising its power to create binding precedents pursuant to the Constitution, declared that the only requirement to pierce the corporate veil is the existence of a group of companies, which results from ownership, from control or from the law. Therefore, to the extent Venezuelan law applies, the piercing of the corporate veil must take place because PDVSA and its Affiliates form a group of companies.

[91] The relevant text in Spanish is as follows: "Las empresas petroleras estatales se regirán por esta Ley y su Reglamento, por sus propios estatutos, por las disposiciones que dicte el Ejecutivo Nacional por órgano del Ministerio de Energía y Petróleo, y por las de derecho común que les sean aplicables".