

## **Issues Arising after Rulings on the Disregard of Corporate Entity: Examining the Experience of the Japanese Law**

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### **Abstract**

This paper focuses on the issues arising from the provision regulating the theory of disregard of corporate entity in Taiwan's Company Law. This paper will analyze judgments dealing with the theory and point out that there are legislative shortcomings in the provision. This paper will also examine the experiences of Japanese law and identify solutions for coping with the issues being faced.

The provision regulating the theory of disregard of corporate entity originates from the general principles of law, based on which the provision is unable to deal with all forms of case involving the theory, showing the limitations of the provision. Because of the provision's inherent shortcomings, there are many issues to be faced. Judges tend not to apply the theory to cases in which the provision cannot deal with it, and so judges must decide if the legal principle can be applied to, or if a solution can be found within the existing legal framework. Taiwan's judges are used to quoting US judgments concerning the theory and use them as a norm. It is worth rethinking if it is proper to make judgments according to foreign precedent. Because Japan and Taiwan are both civil law countries, it is also worth examining the situation in Japanese Law.

In Japan, understanding of the theory can be traced to US and German rulings, but these did not make provision for the theory in company law. Instead, the Supreme Court upheld a judgment in the 1960s in which the theory was clearly applied, and this has remained convention ever since. Though Japanese scholars agreed with the Supreme Court's decision, they criticized the content of the

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convention and emphasized that it is better to find solutions from the existing civil law system. Despite the convention established by Japan's Supreme Court and the criticisms leveled by Japanese scholars, both have agreed with the spirit of the theory. This would offer some suggestions for resolving the issues arising from Taiwan's current situation.

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