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Dear Clients & Friends:

The Flores Group provides international corporate and tax services to international investors and business persons. We have over 30 years of experience dealing with complex business and international structures and transactions. We have experienced bilingual Attorneys and CPA's to assist you with your legal, tax, and business projects. We are providing this Alert for your review and consideration.

Introduction

One of the most important decisions a business owner must make is to choose the best legal form to protect his/her business assets and personal liability from lawsuits, creditors, and other legal contingencies. Only a qualified and licensed attorney can assist with this decision. Forming a legal entity merely for tax purposes without taking into consideration the legal implications is risky and dangerous.

Piercing the Corporate Veil

The doctrine known as the corporate veil refers to the legal protection the business entity provides to take owners of the entity in case of lawsuit and creditors' claims. The concept at piercing refers to legal attacks against the entity that pierce the entity and reach the owners/shareholders personally. It should be noted that piercing the corporate veil may affect both corporations and limited liability companies.

The corporate veil can be pierced for a variety of reasons including, not forming the entity with all the legal requirements of a proper formation, failure to maintain proper corporate records and formalities, disregarding corporate protocol and procedures, commingling of corporate and business property, representations to third parties and other reasons (*Castleberry v. Branscum*, Texas Supreme Court).

Piercing the Limited Liability Company

As stated above, a limited liability company also runs the risk of its corporate veil being pierced. In recent court cases, the courts have held that members may be liable if the LLC is merely an "alter-ego" of the member. In these cases, the courts state that a member may be liable for the creditors claims against the entity. Again, lack of proper legal planning, failure to follow legal formalities and commingling of funds may result in negative consequences for the

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member (Pinebrook Properties, Ltd. v. Broekhoven Lake Properties Owners Association, Texas Court of Appeals).

Proper Legal Planning

It is recommended that proper legal planning include proper formation of the entity with intelligent use of indemnification provisions, limitations on liabilities of officers and directors, limitations on assignments and members/shareholders rights to participate in the business. In addition, legal formalities should be adhered to including proper legal documentation at all transactions and operations of the company.

Conclusion

In conclusion, the use of a qualified and licensed attorney is important to assure that your entity is properly formed and operating. The drafting of company laws, agreements and other entity documents must carefully consider the legal risks associated with the entity. The use of a legal entity merely for tax purposes and not considering the legal implications is dangerous and risky for both the business and its owners.

The Flores Group would be very pleased to help analyze your tax implications. We hope this information is helpful in analyzing your legal and tax obligations in Texas and the USA. The material is meant as a general discussion and not intended to be specific legal or tax advice. You should consult with your legal or tax advisors for your specific situation.

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This information is a presentation of the general rules and should not be used or relied upon for any particular investment or transaction. We recommend you consult your tax attorney or advisor for your specific situation. If you would like more information on these matters we would be glad to visit with you.

As required by United States Treasury Regulations, you should be aware that this communication is not intended or written by the sender to be used, and it cannot be used, by any recipient for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

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**Ruben Flores, Attorney & CPA
The Flores Group**

**San Antonio Office:
9901 IH 10 West, Suite 777**

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**San Antonio, TX 78230
Tel. (210)340-3800
Fax (210)340-5200**

**Houston Office:
2425 West Loop South, Suite 200
Houston, TX 77027
Tel. (281) 292-0044**