LEGAL STRUCTURE OF FAMILY BUSINESSES AND THE IMPACT ON CONFLICT RESOLUTION

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Abstract

The legal structure of family businesses is the form of legal organization that allows administrative management and main source of conflict resolution that can exist in a family business. The study of family business and its structure focuses on the study of legal personality that creates risks for the property of the family and is a source of conflict within the organization. At the same time, it is discovered that conflicts are solved within the family having the mother as the main part of it, besides the risk of breaking of family ties is higher than the disappearance of the family business when conflicts come to courts.

Keywords: family business; conflict resolution; legal structure; corporate constitution; leadership

1. Legal structures

“Legal structures are indispensable in micro, small and medium enterprises, as is widely characterized as employment-generating business units.” (Arenas & Rico, 2014) It is an instrument that protects the assets of the family, and its legal personality is used as a tool of responsibility and obligation of the organization towards the society. (Santamaría, 2014) Most of them are family businesses; the legal structure of the country changes and presents variations in legal personality for companies, which sometimes can leave the family and company vulnerable.

"From the perspective of law, business groups have been addressed in such a fragmentary way by the legal system.” (Aylwin & Rojas, 2005) , normative model which has prevailed a certain interpretation of the concept of company that has identified it with the legal form in which the property has been organized. The legal structure provides the necessary elements for avowing the family property loss.

Family businesses have a key role in the global economy, it is estimated that approximately 90% of companies in the world belong to a family. (Gutiérrez, 2015) One of the peculiarities of family businesses is that they coexist three subsystems (family, company owned and assets). (Belaustegui-goitia, 2010),(Gutiérrez, 2015) He proposes the concept of "family projects" where families build and set up certain projects, with the help of monetary, family, social and symbolic resources to which they have immediate access. Additionally, (Santamaria & Pico, 2015) He adds that the complexity of the family business allows mixing roles of management, planning and resource management family and business as a single entity.

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The legal framework must be clear and precise objectives, it should be drawn up so that the formal legal problems are reduced and the result sought to be achieved (Ugarte, 2013) for (Aylwin & Rojas, 2005) The labor law implications of new forms of business organization are: the processes of productive activities - subcontracting and supply services (Corona & Amat, 2007)

These structures allow the company to maintain a judicial legal set of rules that protect the individual rights of family members, and the collective rights of the family in different roles within the company (ownership and management).

Modern economic units have adapted their structures to business management demands and cost reduction for doing that it requires different legal organization at different levels or legal dimensions: 1. The commercial legal dimension, where it operates under the unit structure or plurality, depending on whether is one or more legal entities 2. The legal economic dimension is operating under the management control of one of them above the rest. 3. The labor legal dimension which can be a single command structure and subordination (Ugarte, 2013)

Legal structures will depend on the economic model of the nation and facilities offered to companies to perform their activities in the protection of their property, leadership, control and conflict resolution, Family businesses have been established with the main intention of providing security and stability to owning families (Santamaría & Pico, 2015) ie productive activities are intended for the development of the family.

The legal structure of the family business is indispensable in micro, small and medium enterprises, as is widely characterized as employment-generating business units. They are mostly family businesses in strata 1, 2 and 3; 85% of micro entrepreneurs are heads of household and their families depend exclusively on income generated by them (Arenas & Rico, 2014)

2. Leadership

The leadership training can come from individual initiative, by the relationship day by day with the family, and the internal and external environment family-enterprise system (Lozano, 2008) “Values education and training in leadership skills must be complemented by formal education that gives capabilities to potential successor to work in the family business if linked”. (Zuluaga & Moncayo, 2014) In addition, in Latin America the role of the patriarch is essential. A key factor in the success of these companies is the strong entrepreneurial leadership of each generation as enterprising people. (Campos, Ronda, Artazcoz, & Benavides, 2015)

The leadership has been studied for years and its approach has evolved. However, no matter if the leader in the organization is born or made, it is clear that leaders are valued in companies being impellers and generate added value in them. (Escandon-Barbos & Hurtado-Ayala, 2016)

At the organizational level, leadership is defined as the attempt to use types of non-coercive influence to motivate individuals to achieve a goal (Gibson, Ivanchevich y Donnelly, 1994, p. 26) cited (Escandon-Barbos & Hurtado-Ayala, 2016)

"The family business is a fundamental part of the productive structures of both industrialized and developing economies, the family business has a key role in generating national wealth" (Anáhuac, 2013) It is also favorable that conflicts appear, conflicts that arise from the mix of family-business roles. (Acosta & Pérez, 2010)

Conflicts in the family business may be inevitable. "Members of the family did not want their family business go through this, but it is not necessarily harmful" (Anáhuac, 2013) and for its solution different paths are followed and they may arise from the legal structure or family structure. The conditions of gender inequality in employment conditions and health problems related to work, influence on state policies the conditions of gender inequality in employment conditions and health problems related to work, influence on state policies (Campos, Ronda, Artazcoz, & Benavides, 2015) and influence the position of the members of the family business.
3. Role of women

Women offer choices and more democratic and participatory organizational proposals that are based on the ethics of care and turn out to be better than traditional male schemes which are declining and are associated with authoritarianism, ambition and the pursuit of power (Zuluaga & Moncayo, 2014)

Traditionally women in Latin America have not had a visible role, even reaching discrimination; however, in family businesses play a decider role, especially for conflict resolution. According to (Moncayo & Zuluaga, 2015) end is the majority among managers and senior executives, while women still remain concentrated in the lower grades (Folle, 2014) but their role in decision making can change within companies

It’s identifying men with his father and his mother differentiation, and the opposite situation in the case of women. (Zuluaga & Moncayo, 2014) They are key elements of the social aspects arising from the family and can be transferred to the company. Various authors as Scott (1996), Fraser (1995), (Sánchez, 2009), Lavie (2009) state that the proper development of women and the male role in the company cause conflicts and alter the climate-organization.

When the word "conflict" is mentioned, usually it comes to our minds chaotic and violent situations. Nothing further from reality. The existence of the conflict is normal, because our nature as human makes us think, feel and perceive reality in different ways. The conflict is therefore useful to improve the level of individual decisions, so much so that Peter Drucker, considered one of the great management theorists of the twentieth century, argues that if the disagreement, so natural in human affairs does not presents itself, we must encourage it, because we must not deprive ourselves of its benefits. Therefore, conflict can be defined as a difference of perception of reality between interdependent groups where not all desires and expectations for everybody are satisfied. (Mendoza, 2009)

The conflict must be exploited by companies as a tool to overcome the complications of family businesses, where the mixture of roles is constant and from there generate conflicts that are solved with the intervention of the same family, especially women.

From the above it is seen as problem What impact has the legal structure in solving conflicts of family businesses? for which it is proposed as an objective: Identify the impact of the legal structure of family businesses.

4. Data and Methods

The research was conducted under the phenomenological paradigm to explain this reality through the observation of the characteristics and elements that happen around the problem studied. Therefore, working under the qualitative approach needed to determine properties and describe the environment of the reality studied.

Descriptive research has helped to explain the development of conflicts within the family business based on the conception of the legal structure and motivating to keep a business within the family. The population for the study was 23700 family companies that are grouped within a geographical territory, micro, small, medium and industry in the various areas of the economy such as: production, marketing and service delivery. The sample consists of 530 companies that have the characteristic of family businesses, a poll is applied and one interview is conducted to the leaders of the family-company. The validated poll and the interview are the instruments to collect the information. The selection of family businesses was randomly based on the existing record in the Associated Chambers, the collection was performed by means of self-filling survey, which was given to each representative company who provided the information for the research. This process was conducted during the first quarter 2016.

To test the results, the population is divided into three groups, with different characteristics:

- Group 1: companies with legal personality
- Group 2: natural person between 2 and 20 years of operation
- Group 3: natural person over 20 years and second generation.

As data collection instrument a survey that has been validated with Cronbach's alpha is used = 0.869 which it has applied to a group of 24 representatives of family businesses as a pilot. The questionnaire is structured by questions of categorical type which work on the study of the legal juridical business conditions and the process of conflict resolution this group of companies are living.
5. Results

78% of family businesses maintains the structure of natural person, making the property risk of the company and family mix and be managed as a single entity. Only 22% of companies consider appropriate to establish the company as a legal entity, among the factors influencing this decision is the costs associated with the strictness of laws and information required by regulatory agencies.

<table>
<thead>
<tr>
<th>Natural person</th>
<th>78%</th>
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<tbody>
<tr>
<td>Legal person</td>
<td>22%</td>
</tr>
<tr>
<td>Head of household</td>
<td>69%</td>
</tr>
<tr>
<td>with spouse</td>
<td>17%</td>
</tr>
<tr>
<td>with family</td>
<td>14%</td>
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</tbody>
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Fig. 1. Legal structure in decision-making

Decision-making, regardless of the legal structure of the company are taken only 69% of occasions by the head of household, low participation spouse and family is to reach agreements that benefit the company. This decision making process is observed in the family and company, that is, the patriarchal leadership has strong presence in companies.

The patriarchal leadership of the family company and is recognized in 84% of cases, which is expressed in the appointment of senior positions within the company, career choice of their children, decision of hiring new staff of the family or outside the family and business-family-economic support for the internal crisis of the family.
From conflicts generated within the company, 81% of companies recognize that business conflicts have affected the family, i.e., influences the management of the company on family activities and vice versa. Of these, 65% have been solved by own initiatives of the family which has mainly involved the mother or wife (woman), considered as a moral authority for these conflicts and who can make decisions that are respected in family and business organization.

Third party intervention in conflict resolution helps reconcile different views of the family, being the second instance and finally the judicial intervention that is 16%. Judicial intervention affects family relationships this is joined by the constitution of companies that mix the ownership and management of the company with the roles within the family. From conflicts that reach legal instances is observed that the agreements do not benefit all equally and breaks family relationships, therefore, legal structures should be seek so they favor family property.
Family businesses recognize as their main reason for existence and permanence in time is: 63% for economic support of the family, 19% as a legacy for future generations and 18% as an independent unit of the family heritage. That is, that the company survives family conflicts by being an integral part of the family.

6. Conclusions

The family business does not measure the property risk associated with the legal structure of natural person where family and business roles are mixed. This structure is being selected for cost and friendly implementation in contrast with difficulties that offer other legal personalities. Leaving there a latent risk on patrimony that is displayed when there are family breakdowns and death of the founder and divorce within the family members.

The family head and leader of the company founder, who has set the company for the development of the family, so companies are managed under the patriarchal autocratic style, run the family business. Leaving women in secondary role in decision-making within the company.

The conflicts in companies can transcend the boundaries of the company and reach families where mothers’ mediation is needed because they are considered as the moral and conciliatory leaders so conflicts can reach agreements and be solved.

Companies can reach judicial conflicts to solve problems. However, this solution affects family relationships because the company does not have clear guidelines for the ownership, management and family. Thus, this solution causes that the agreements reached are not equitable for family members.

Its members defend the family business from conflict since it is considered as the source of income for family subsistence and growth of wealth that benefits future generations. This makes the company as such to overcome its conflicts and the family-company link subsists even though it is not structured.

It is advisable to create legal structures that allow the creation of family businesses, considering that over 90% of companies were born at the family. This should lead to the creation of structures cling to the need for this group of companies.

References


