Commerce

Business

What are the benefits to commerce of having shareholders—and other entities that shield their members—protected from personal liability? All businesses carry corporate debts or liabilities to some extent. When an entrepreneur starts doing business without forming a liability limiting entity such as a corporation or a limited liability company, he either forms a sole proprietorship or enters a general partnership. Incorporations do not hold a person personally liable for any accumulated liabilities claims except his investments in the company. The limited liability entities form a corporate entity with fixed sum of money that owns the company. For instance, if sued for damages, debts can only be collected from business assets. In contrast, sole proprietorships and general partnerships offer no shield or protection against personal liability and creditors can satisfy liabilities from personal assets of the owner(s). For instance, in the case of Walmart, they offer shares to be purchased as a benefit to their associates. If an associate chooses to invest their money in stock purchases and Walmart becomes severely devalued or goes out of business all together, the associates that invested to purchase stocks will not be held responsible for any outstanding debts of the company. However, in order to avoid risks due to small invested capital, creditors may require personal guarantees from owners of the incorporations.

As shareholder entities have separate legal existence, personal liability protection is a major benefit for owners of small and medium incorporated businesses. New shareholders and investors can be easily attracted if their personal assets are protection is guaranteed, increasing the investment pool. The investors willing to remain passive are not responsible for managerial activities of the active shareholders. The corporate legal person has infinite life span, and management changes such as resignation, retirement or death of corporate personnel has no affect over the entire existence or continuity of incorporations. Separate legal personality of firms provides shareholders with liberty to choose the tax treatment according to their investment projects. Transaction costs and operational risks to owners are reduced through existence of a legal framework. The investor does not have to pay taxes on the profits of the company; only on the share that they receive in dividends which are taxed at a lower rate. The taxes that are paid on profits are the responsibility of the company. Other taxation benefits of incorporation are that once incorporated, many additional items of expenditure become tax deductible. For example medical expenses, entertainment expenses, vehicle and travel costs, recreational facilities and pension costs all become tax deductible. This can be a significant cash benefit. Additionally, tax free pension plans are offered to employees by incorporations compared to the lower benefits under contracts in sole trade businesses.

Would commerce be better served if personal liability would attach to those individuals for the misdeeds of their entity? Why or why not?

Though shareholders are considered separately from corporate entity and they are not held liable in company law, particular rules should be devised to hold shareholders responsible for their own obligations to the company irrespective of the company form. For instance, it is obligatory for the shareholder to pay for amount of the shares. If individual employees of business entities are not held responsible for their misdeeds this would encourage a higher incidence of violations due to their immunity from responsibility. Reckless actions would result if employees are immune from punishment, and ultimately either the company itself would suffer financially or other parties would be injured by the recklessness of the employee's individual action. Holding all employees personably responsible for their actions assures that they will be more vigilant and thorough in their authorization or performance of risky and/or inappropriate behavior, and knowledge of their responsibility would lead to a safer and more productive environment for all concerned.

In publicly traded companies many of the shareholders are not involved in the management of the company. The appointed board members of its subsidiary look after the interests of the company. The people carrying out misdeeds must be identified. If anyone sustains a loss due to their actions, he pursues the corporate entity to recover the losses. According to the tort law, the identified shareholder is responsible for misdeeds of his employees and agents which also include directors. However, company law resists holding shareholder responsible for actions of corporate entity and its workers. Once again in a company the size of Walmart, each associate has the option to purchase stock thus becoming a shareholder. If Walmart is sued or files bankruptcy, the individual associates are not directly responsible for the mismanagement of the company that led to the lawsuit or bankruptcy. These associates suffer an individual financial loss up to what they invested, and should not be held responsible for their entitys misdeeds. However, commerce would not be better served if the investors of a company were held responsible for the misdeeds in case of a large company. In a large company, large numbers of decisions are made daily and investors would not have much of an individual say in those decisions. The marketplace would also be worse off if the investors are held responsible as it would not be possible for a few individuals to raise the large amount of capital needed. All things considered, the marketplace and commerce would not be better served if investors of a company do not have any kind of liability protection. However, governing rules should be

References

Mantysaari, P. (2009). The Law of Corporate Finance: General Principles and EU Law: Cash flow, risk, agency, information. New York: Springer.

Mancuso, A. (2010). LLC or corporation? How to choose the right form for your business. 4rth edition. USA: Nolo.