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Transparent Company Sale

The past few years were nearly the "Golden Age" for company owners contemplating the sale of their businesses. The economy as well as enterprises have experienced a boom; interest rates continue to be low, with the indication of their increase in the near future motivating investors even more strongly to purchase shares in prosperous companies right now. As a result, potential investors are throwing money at such businesses.

Strong competition among investors interested in buying a company creates pressure not only on financial and other parameters of their bids but also on the promptness of the execution and settlement of the entire transaction. Some investors are thus willing to accept a much higher degree of risk, for example by curtailing and narrowing, or even eliminating, the due diligence process of the company of interest to accelerate the transaction as a whole. This may, yet often seemingly, pose an advantage for sellers. The investor's insufficient review of the subject of purchase prior to the transaction often becomes the source of future disputes between the original company owner and the new investor.

Even the basic legal framework of the most common purchase agreement requires that the seller bring to the purchaser's attention any defects on the subject of the purchase. In the area of mergers and acquisitions, this obligation has had a much broader interpretation for decades due to the established institute of the seller's assurance concerning the capital investment to be sold itself (i.e. equity interests and shares) as well as all possible aspects of operation of the company in question. The seller can only be released from the liability for certain defects when compared to the company's condition as asserted in the sale if they notified the purchaser of or allowed the purchaser to identify those defects, such as by providing the most detailed supporting documentation for performing the vendor's due diligence.

A risky course of action on the investor's part in acquiring an enterprise without customary due diligence may, as a consequence, turn against the original owner that has not been given the opportunity to inform the investor on potential defects. Resulting disputes impose a significant financial burden on both parties involved, which could, however, be avoided. Nevertheless, the seller may assume a more-active role in the transaction and perform the vendor's due diligence for the purchaser. The seller may also have the company's as-is state assessed by relevant specialists and handle the resulting findings, which may cause harm to the purchaser, transparently within transaction-related negotiations to clearly distribute related risks among the parties to the transaction. Each investor may address transaction risks by reducing the purchase price; nevertheless, this will only provide the seller with a bid that is truly comparable. By accepting it, the seller will have a substantially higher level of certainty that it will retain the transaction proceeds in the future which is among the key factors in company sales.

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Understand First and Then Regulate

Legal regulations may sometimes be scary. They a *priori* provoke aversion, generating enormous compliance costs. Rules are often duplicate or even contradictory. Public regulation is beyond control in certain areas, with the available capacity of companies or the current technology being unable to ensure full compliance with all norms. Regulations are often inadequate to the risks against which they should protect, disregarding those of greater significance.

We have extensive experience with all of this. The British "Locomotive Act" dated 1861 required "locomotives" (mechanically propelled vehicles) to be operated by two persons and not to exceed the speed limit of 10 mph. More-stringent criteria were introduced by the Red Flag Act in 1865, requiring a third person to carry a red flag at least 60 yards ahead of an approaching vehicle as a warning (the act also reduced the maximum speed to 4 mph). The Act was abolished three years later.

A great many similar episodes can be found in the history of regulations. Does it mean that the new business was not supposed be regulated by the state at that time? Regulation was certainly necessary but the state should have better understood the coming technology. This error is frequently repeated at the present time, with the difference that the emergence of new technologies has accelerated at an unprecedented pace, resulting in a growing gap between the need for regulation and its existing state.

Traditional regulation is becoming outdated and public administration – we all – are on the verge of regulatory revolution. We must collaborate to find new, faster and safer forms of business regulation that will not hinder innovations, effectively regulating new risks while internalising new externalities.

First, it is necessary to revise the current regulations – by means of tools, fortunately. Deloitte conducted a data and text analysis of the 2017 US Code of Federal Regulations, having identified 18,000 Sections of 217,000 with a similar wording. Such "exercises" enable an effective elimination of duplicates and conflicts in the rule of law that may be further clarified by parallel transitions to regulatory templates, as attempted by the Czech Chamber of Commerce in respect of the Legal electronic system.

Nevertheless, a sole revision of the existing regulations will be insufficient. We need to start employing tools of adaptive regulations with the use of new technology as well as psychological and sociological insight, predictive analytics and crowdsourcing to identify presumable violation of legislation and to understand the need for regulatory changes, and chatbots to explain statutory duties to users for the limited capacity of officials to be saved for more demanding activities. It is necessary to involve regulatory experience more quickly. We need to use regulatory labs and incubators to test new products, services and business models in a regulated environment without complying with all of the existing regulation or with the use of new one.

We need innovations, which pose an increased burden on officials, to be used for ensuring more-efficient public administration. Regulators can work more effectively while promoting innovations and protecting constitutional rights and freedoms.

I am looking forward to the debate next year stirred up by the 10th annual Act of the Year survey as well as to the regulatory revolution we are entering just now.

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