Due Diligence Report and Its Role in Foreign Investment Transactions

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Abstract

This article aims to present the main guidelines of the concept of due diligence, a review of the legal history of a business, from several points of view, such as concluded contracts, human resources and working conditions offered, existing disputes, financing methods, etc., before af the acquisition of that business, knowingly, by offering specialized recommendations. These aspects are inherently part of the life of international investments. In this sense, we will approach this topic by analyzing the way of drafting and the content that the report must have, researching the normative framework, commenting on some relevant jurisprudential benchmarks, through which to concretize the role that this approach has in transitions, but and offering some doctrinal interpretations, through which the literature looked at due diligence from various perspectives, sustaining, inter alia, arguments in favor and against this operation, so that, at the end of the paper, we can conclude whether this examination is necessary or not in present.

Keywords*: due diligence, transactions, acquisitions, consulting law.*

JEL Classification*:* K20, K22

1. Introduction

In the context of the extraordinary evolution of company acquisitions, and as a consequence of the M&A area, the buyer wanted as clear a knowledge as possible of the history and the economic and legal status of the respective business, which is of interest to him, because once he has concluded the transaction, must comply with the obligations resulting from the contracts to which the legal entity is a party, to represent the company in the processes that are already pending or that will arise as a result of violations of the legislation by the legal entity or even possible litigation, such as those with the company's employees[2].

The solution was to create a report through which an x-ray of the respective business would be made from several areas, which we will analyze in the section dedicated to the way of writing and the content of the report. This activity is an attribution that belongs to the essence of consulting law,[3] which analyzes the files archived by the respective company and makes the respective report, showing the client what are the inadvertences and the solutions found to buy without any reservations or fears regarding the possible risks to which it is exposed.[4] For example, performing significant and thorough due diligence before serious investment or acquisition negotiations, including the risk premium for political risk in cash flow analysis, and early

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[2] L. S. Speeding, *The Due Diligence Handbook Corporate Governance, Risk Managementand Business Planning*, Elsevier, Cima publishing, Oxford, 2009, p. 2-3.

[3] S. Foster Reed, A. Reed Lajoux, H. Peter Nesvold, *The art of MA. A Merger Acquisition Buyout Guide*, Mc Graw Hill, 2007, p. 384.

[4] Ibidem.

planning for post-merger integration are critical to avoiding the harsh outcomes that many investors they experienced abroad.[5]

Terminologically, "due diligence" comes from the English language and indicates the phrase due to due diligence. Diligence, according to DEX, represents diligence, increased attention in identifying and preventing a certain situation, and part of the doctrine is of the opinion that diligence also reflects good faith, as the person avoids any kind of ignorance, wanting to be aware of cause of his future actions. The doctrine also defined due diligence as a journey of discovery[6] or legal action with the primary purpose of avoiding litigation, and secondarily to determine the value, price, and risk of a transaction.[7] What we can deduce from this definition is that this report is intended to prevent a court action, in other words, the buyer ensures that he has made all the necessary efforts required by the diligence of a bonus pater familias in knowing the possible elements that would trigger a prejudice his, and to show the court this fact.

There are several types of due diligence. In addition to the legal or juridical one, which was the subject of this article, financial due diligence is also important, which primarily identifies the fiscal obligations it has in relation to the state, technical due diligence, which analyzes the feasibility of a project in relation to that business depending on the existing technological conditions, for example the condition and degree of wear and tear of a car belonging to the legal entity or its property. There is also commercial due diligence, which deals with identifying the opportunity to buy the business, from the point of view of the possible profit obtained, the sales strategy, the resources available from the start.[8]

In this article we aim to answer the question "How do we write a report of this kind and what exactly do we need to consider?". Then, we will expand the research on the normative framework, by rendering the existing normative acts and provisions that regulate this type of report. We will also focus on some jurisprudential benchmarks, in outlining a concrete way of functioning in judicial practice of these reports and how they are evaluated by the court. We will conclude the article by presenting some interesting perspectives from the specialized literature, in order to complete an image on this subject, like a puzzle game.

2. The way of writing

Since there is no normative act that provides how such a report is structured or what it should necessarily contain, it has been left to the doctrine to analyze the necessity of certain elements and sections, based on the painstaking work of practitioners.

First of all, two documents must be concluded: a letter of intent, expressing the desire to buy the business, and a confidentiality agreement regarding the documents checked for the report.[9] The document is drawn up following extremely careful research of the company's archive, which we can estimate would reach hundreds of files with

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[5] Abdol S. Soofi, *China's Foreign Direct Investments: Challenges of Due Diligence and Organizational Integration*, „Economic and Political Studies", 3:2, 2015, pp. 112-143.

[6] G.F. Grebey, *Operations Due diligence: To gain what is owed through care and perseverance*, Mc Graw Will, 2012, p. 5.

[7] Charles Bacon, *CEO of Due.Com Group of Companies*, *apud* L.S. Speeding, paper cited, p. 4.

[8] B. Kirkulak Uludag, *Due diligence*, Encyclopedia of Corporate Social Responsibility, 2013, p. 842.

[9] Foster Reed, A. Reed Lajoux, H. Peter Nesvold, *paper cited*, p. 383.

documents, some of which contain contracts that are no longer in force, and others with internal regulations that could no longer have legal effects. In this sense, a selection of documents is necessary, since such a review must have such a large number of pages that the reader's attention is distracted from the really essential aspects.

There is no generally valid structure, this varies depending on the model adopted by the team of lawyers that performs the analysis, but also in relation to the client's requirement, since if he is only interested in the real estate or corporate part of the company, the document will be limited to these aspects.

However, a complete report should include an introduction that presents the subject, i.e. the company that will be evaluated, the client, the date from which it started and the date of completion, these important coordinates especially in the circumstances of a legislative inflation, through that involve changes at the legislative level that attract an insufficiency or incorrectness of the information in the document. Then, the elements that are verified by that review must be expressly stated, i.e. only the legal aspects, not those of another nature, and the liability for other aspects is removed, but also for the way in which the client uses this information, but there is an obligation of confidentiality of the lawyers towards the respective client.[10]

Also in the introductory part, the sources used in order to create that material are specified, specifying that they will only be used for the drafting of the document, and if the real situation is not fully reflected, it is because not all the necessary sources were provided, the practitioners working only with what they requested and received, not having access to other documents.

Passing this introductory part, we arrive at the content itself, in which different areas of interest will be evaluated, identifying for each individual case the problem and the solution offered. There is no standard order of the areas analyzed, it may differ depending on the differences depending on the severity of the problems identified.

We will briefly analyze these areas, starting with the corporation domain, since administrative decisions and the way the company is organized and operated are made at this level. From this perspective, the report will reflect the decisions taken at the level of the previous General Assembly of administrators and which are still in force, with effects that could influence the good approach of the new business. We refer here to decisions taken illegally, which could later attract the liability of the legal entity.[11] Of course, within the report, recommendations will be made in order to remedy these problems, such as the AGM meeting to withdraw those decisions that could raise problems.

At the banking and financing section, credit contracts and other ways by which the respective legal entity obtained funds to carry out its activity are checked. Credit contracts are extremely important, as there could be various clauses, such as those of change of control, through which the banking institution imposes certain restrictions on the one to whom it has offered the credit, and these could be so significant that they are of a nature to leads to decreased profit or even bankruptcy. From this point of view, maximum prudence must be shown in relation to creditors, who have an interest in

[10] S. Rahmati, *Private Equity Company Due diligence. How to achieve the best acquisition price and exit return*, PEI, 2012, p. 116.

[11] W. J. Gole, P. J. Hilger, *Due diligence: an M&A value creation approach*, John Wiley & Sons, Inc., Hoboken, 2009, p. 182.

obtaining the capital and an interest as high as possible.[12]

The competition section thoroughly evaluates the policy adopted by the seller regarding that business in the market, in relation to the other businesses, but also carries out a description and sizing of the relevant market segment(s).[13] Since the activity of the Competition Council is very varied[14] and often results in sanctions that could reach the turnover of the legal entity,[15] from the moment of the purchase, the person who wants to continue the respective business must undertake or try to negotiating with that seller, in order to remedy those aspects that could lead to significant future damages.

Data protection analyzes how the company has complied with the mandatory provisions laid down by the GDPR Regulation, through the obligations of information on the collection and storage of personal data, requesting consent and maintaining their confidentiality.[16] If previously t hey had not given much importance to this area, starting in 2015, when the European regulation entered into force, the optics of those who managed companies became a completely different one, since the sanctions, similar to competition, could have caused the liquidation of the company. In these circumstances, any small issue, perhaps lacking relevance at first sight, must be provided for in the report, as there will be consequences both for the buyer, who, not knowing, will continue the business and bear the sanctions of a contraventional nature, as well as for those who perform the report, because they did not show responsibility in fulfilling the assigned task.[17]

Employmentant evaluates the status of the employees, by analyzing the individual and collective labor contracts, the existence or not of a Trade Union, if there are outstanding salary rights, possible vacation days not taken by the employees or ongoing disciplinary check regarding some employees.[18] It is important to know these details from HR, because when the business is taken over, it will be taken along with the employees, the employment contracts being opposable to the buyer. Also, extreme attention must be paid to those who do not work on the basis of an employment contract or who perform more duties or tasks than the contract stipulates, without changing the job description or drawing up an additional act,[19] since the labor inspection does not it will give importance to the fact that the business is newly acquired and the buyer was not aware of these details. In addition to all this, there may be non-competition clauses that are in contradiction with mandatory legal provisions and affect the Competiton side.[20]

Regarding the environment field, the section can be divided into: air pollution, pesticides and toxic substances, conservation capacity, environmental resources,

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[12] Ibidem, p. 113-114.
[13] Ibidem, p. 183.
[14] Competition Law no. 21 of 10.04.1996, Official Gazette no. 153 of 29.02.2016.
[15] Guide on the sanctions applied by the Competition Council, available at the internet address: http://www.consiliulconcurentei.ro/wp-content/uploads/2011/02/GHID_privind_sanctiunile_aplicate_de_catre_consiliul_concurentei.pdf.
[16] Regulation no. 679 of 27.04.2016 regarding the protection of natural persons regarding the processing of personal data and regarding the free movement of such data, J.O. no. 119/1.
[17] J.W. Berkman, *Due diligence and the business transaction*, Apress, 2013, p. 247.
[18] Ibid, p. 86.
[19] Art. 41 of Law no. 53 of 24.01.2003 regarding the labor code, Official Gazette no. 345 of 18.05.2011.
[20] Art. 21-24 Law. no. 53/2003.

environmental taxes etc.[21] It should be noted that here too there are rigorous checks, this time from the Environmental Guard, which could sanction the way the company's activity is carried out, as this prejudices the environment, as are very common cases such as throwing waste or substances chemicals in an area that is not specially constituted for this purpose.[22]

Intellectual property evaluates copyright assignment agreements, patents and inventions or applications that the firm believes it owns copyrights, using them in this way and obtaining financial benefits.[23] A problem that could exist would be that the trademark is not registered or that the rights that the company believes it received by purchasing from the inventor are not legally recognized,[24] since there were several contributions to the creation of that invention, and those persons who have not expressly ceded not to be known, but there is still the risk of later claiming damages from the buyer for the illegal use of that invention.

Litigation pays attention to the disputes that are ongoing, on the object, the procedural quality that the legal entity has, the value of the action, assuming in this way the risk, as there is a random element in this business purchase, of not having a profit in that action, and if the effects of this loss will be greater than the profit that could be achieved through this operation, this difficult choice rests with the investor, even if the practitioners could, based on the verification of the concrete situation and the administered evidence, the existing chances and probability of an earn.[25]

Last but not least, real estate deals with the presentation of real estate held in the patrimony of the legal entity, the real rights that may encumber the respective real estate, the existing real estate guarantees, also referring to the banking field and guaranteeing the execution of obligations. It also verifies compliance with real estate advertising conditions and the existence of building permits. In this section, a description of the buildings, their past, through the lens of the former owners, the ways of acquisition and administration is carried out.[26]

Therefore, a complete report should cover all these areas, thus reflecting the actual situation of the respective business. The buyer can narrow the scope of the report, asking only certain areas of verification, which are of more interest to him, assuming that the other areas are legally compliant.

3. Legislative framework

We must make a mention at the outset regarding the legislative framework. There is no enshrined in domestic or comparative law any obligation to draw up the due diligence report, but there is an obligation to show diligence in transactions, and this diligence can be manifested through this review or other means, such as having frank

[21] A. Reed-Lajoux, C. Elson, *The art of MA Due Diligence, Navigating Critical Steps and Uncovering Crucial Data*, MC Graw Hill, 2010, p. 326.
[22] Government decision no. 1005of 17.10.2012 regarding the organization and operation of the National Environmental Guard, Official Gazette no. 729 din 29.10. 2012.
[23] W. J. Gole, P. J. Hilger, *cited work*, p. 162.
[24] O. Mihăilă, *Intellectual property law*, Universul Juridic, Bucharest, 2021, p. 219.
[25] W. J. Gole, P. J. Hilger, *cited work*, p. 154.
[26] J. Scharfman, *Private equity operational due diligence. Tools to evaluate liquidity, valuation and documentation*, Wiley Finance, 2012, p. 55.

discussions with the seller or inspecting with your own senses the situation in that company, without hiring a team of lawyers to create that document.

The reason why the report is not mandatory is due to the fact that this investigation is a measure taken on the buyer's own initiative to ensure that it will not acquire a business that does not present certain guarantees of legal compliance. Therefore, it cannot be imposed to carry out this step, since everyone materializes their obligation of diligence in different ways.

In domestic law, the duty of care exists for the members of the legal entity's administrative bodies, in art. 213 Romanian Civil Code,[27] according to which they must act as good owners, in favor of the legal fiction. Then, in art. 347, the legislator does not oblige, but defends the buyer who showed diligence in researching the nature of an asset that, in reality, belongs to both seller spouses, but only one claims to be the exclusive owner. Also, art. 803 provides for the administrator's obligation to show diligence in managing the beneficiary's assets, but not any form of diligence, but a paters familias bonus. At the same time, the buyer cannot request the cancellation of the contract for the defect of consent represented by an inexcusable error, that is, the said error that appeared without any research that reflects the diligence of the buyer, according to art. 1,208. In other words, the error cannot be invoked, if previously the buyer did not show diligence in identifying these aspects.

We can also observe that the legislator is much more demanding with professionals, in terms of the execution of contractual obligations, according to art. 1.480 (2) and not only, and precisely from this point of view, the existence or not of steps that reflect the degree of diligence must materialize in tangible, definite actions that can be proven in court, in the event of a litigation.

Regarding the seller's liability, on contractual grounds, if the transaction has been completed, the buyer invokes damages resulting from that contract, art. 1.534 (2), the seller will not be liable if those damages could have been avoided by showing minimal diligence on the part of the buyer. It is not specified what constitutes minimum due diligence or whether it may extend to the drafting of such a report, but certainly its performance "shelters" the buyer from such issues. Also, regarding the vices, the legislator specifies that the hidden ones, and not the apparent ones, can be identified through specialist assistance,[28] as in the present case, problems discovered by legal specialists following the respective assessment presented in the previous section.

Staying on the seller's responsibility, but this time we are considering another liability, namely tort. Since the process of concluding a contract involves several stages, including the offer, acceptance, negotiation, the meeting of the agreement of the parties,[29] at the moment when that report is made there is no convention that obliges the seller to comply with the recommendations in that report, since the parties are still in negotiations, but if following this effort made by the buyer, through which the intention to purchase is very clearly illustrated, the seller shows indifference and passivity, he can be liable civilly tortiously, based on art. 1.183 (4). The reason is that, undoubtedly, there was bad faith[30] on the part of the seller in the negotiation, not even trying to initiate some

[27] Law no. 287 of 17.07.2009 regarding the Civil Code, Official Gazette no. 505 of 15.07.2011.
[28] G. Boroi, C.A. Anghelescu, *Civil law course*. *The general part*, Hamangiu, Bucharest, 2021, p. 377.
[29] B. Oglindă, *Civil Law. Obligations*, Universul Juridic, Bucharest, 2021, p. 50.
[30] E. Veress, *Civil Law. The general theory of obligations*, C.H. Beck, Bucharest, 2019, p. 33.

remedies for problems identified in this company, thereby creating prejudice to the buyer.

4. Jurisprudential landmarks

In this section we will make references to judicial practice, by illustrating how the court appreciates that the preparation of the report reflects compliance with the obligation of diligence, but also the probative status of this report in litigation, but especially if it influences or not and to what degree, the win the buyer. In this sense, we will refer to both national and European jurisprudence, represented by the CJEU.

We will start with the internal jurisprudence, with reference to the judgments of the High Court of Cassation and Justice (ÎCCJ). In this sense, we bring to the discussion an interesting case in which a promise to sell-purchase a plot of land was concluded, which contained the obligation of the promisor-seller to deliver the documents necessary for the preparation of the due diligence report, within 45 days, until the presentation to both parties in order to authenticate the contract, specifying that in the event that the documents are not delivered on time, the only sanction is the extension of the deadline for making the report, and consequently, the conclusion of the sale. What is important, however, is the manner in which the parties viewed the respective responsibility for making the report, as the promisor-seller undertook to make an advance in the amount of 50,000 euros in a fiduciary account opened by its lawyers, to be transferred this amount to the plaintiffs, after carrying out a favorable due diligence report.[31] In other words, not any kind of result offered in the report would have allowed the conclusion of the contract, but only a favorable one, so the obligation was subject to a suspensive condition.

In another case,[32] also regarding a promise to sell, but this time from a different perspective. More precisely, although the promisor-sellers undertook to provide the promisor-buyer with documents upon request for the purpose of the report, the latter remained passive, which led to the postponement of the authentication of the contract. The appellate court found a lack of interest on the part of the promising buyer, who should have requested the information, but the term "requested" refers to necessary or necessary documents, so it does not refer to the person from whom the information is to be requested, which means that the semantic interpretation of the pre-contract terms does not reveal the obligation of the promising seller to provide information and documents only at the request of the promising buyer. In other words, the prospective sellers should have provided such information and documents on their own initiative to clearly illustrate the intention to sell.

In another case,[33] a contract for the transfer of shares was concluded, which was completed with a convention according to which investigations will begin with the object of the company whose shares were transferred, for the preparation of a due-diligence report, but not any kind of report, but one of opportunity, stating that in the hypothesis of a single check, the result will be negative, then the buyers have the right not to purchase the respective share, and the sellers and the company lose any right to ask for

[31] High Court, Decision no. 3138/2014, dep. II civil, from 21.10. 2014.
[32] High Court, Decision no. 2408/2010, dep. II civil, from 23.06.2010.
[33] High Court, Decision no. 1328/2019, dep. II civil, from 17.09. 2019.

remedies or raise exceptions. Also, the report verifies, in addition to the opportunity, the feasibility and the existence of authorizations for any kind of activity carried out by the company. Since negative aspects were identified, the assignment of the parties no longer took place, and the selling-plaintiff invoked claims, such as the payment of the price difference, however, since the will of the parties was different, the court itself is bound by their convention, so the claims were rejected as unfounded.

The jurisprudence of domestic common law courts faces this problem of the due diligence report too, although there are cases where the report was drawn up, but did not contain all the necessary information, as the seller did not present the necessary documents. In addition to this situation, we will try to present other interesting hypotheses on how this check works in contentious reports.

In this sense,[34] in one case, a contract was concluded for the reservation of a building, with a view to its purchase, the buyer taking the necessary steps for the purpose of drafting the report, however, one day before the authentication of the sales contract, he noticed that around a 23-story building is being built on the property, so he requested the return of the amount offered as a reservation fee and the expenses incurred in drafting the report, on the basis of unjust enrichment. The court analyzed the contractual provisions and observed the existence of an obligation to return double the amount of the booking fee, if the respective contract is no longer authenticated due to the fault of the developer, therefore, since there is an arvuna, although it is not expressly provided for, and unjust enrichment is subsidiary, the court rejected the action also regarding the end of the request regarding the expenses involved in the process of making the report.

In another case,[35] the plaintiff requested the annulment, for illegal and fraudulent reasons, of the legal assistance contract between him, represented by the administrator of his company, and a lawyer, for the development of a real estate project, and the lawyer's tasks include consulting and making reports due diligence. The plaintiff invoked the fact that these tasks had already been carried out at the time of the conclusion of the assistance contract, in other words the contract would be fictitious, backdated, she states. The reason that led her to have this belief is the fact that the invoice for the report was issued a few months before the report was made, and it contained documents that did not even exist at the time of writing the report, referring to documents that were concluded a year later. The purpose of all these works would be to create a fictitious claim that would allow its execution in order to acquire the property, but the court rejected this argument. The court rejected the request, as the legal representative of the company admitted that he was not the victim of any vice of consent, and from the perspective of the immoral cause, that of defrauding the plaintiff's interests, however, since the acts concluded between them are opposable to the plaintiff, the latter not being able to plead his own fault.

In another case,[36] the plaintiff, as the prospective buyer, requested the return of the amount paid under the pre-contract for the sale of some apartments. In this case, the parties have established that the authentication of the contract will take place if the due diligence report is favorable, giving themselves a term of 150 days for its completion, and if it is not favorable, the promisor-buyer is given the opportunity to ask for the

[34] Buftea Court, sentence no. 7927/2015, dep. civil, from 13.11.2015.
[35] Bucharest Court of Appeal, decision no. 494/2016, dep. IV civil, of 22.06.2016.
[36] Cluj-Napoca Court, sentence no. 5017/2019, dep. civil, of 24.06.2019.

resolution. The court dismissed the action, as it did not exercise this right within a reasonable period, not within a year of ascertaining certain aspects that could be observed with minimal diligence, such as the encumbrance of real estate through an information extract from the land register.

5. Doctrine

We will also approach the optics of specialized literature, which analyzes this report with its pluses and minuses, concluding whether or not such an approach should be carried out. From this point of view, an author argues that the advantages of this examination through red flags lie in the detailed and specialized knowledge of the business, the prevention of fraud by the seller, the assessment of the risk of bankruptcy.[37] For these reasons, the author does not hesitate to criticize the negligence of the legislator in building a positive law that regulates a standard of these analyzes materialized in the reports. However, a more important aspect consists in the lack of standardization between the practices established at the national level in the way of investigation and drafting, since in the great commercial powers, the USA, Great Britain, Hong Kong, there are divergent working models.[38]

Another author shows the minuses of this operation, namely that, most of the time, it is carried out a few days before the conclusion of the transaction, so the huge amount of work with extremely high efforts can be reflected in a few pages. Then he also argues that the purpose of the report is misunderstood, because it cannot predict the intensity and number of future risks after contracting, because it only analyzes the precedent, based on archived documents, but after the contract is signed, risks can arise at any step, which the specialists could not foresee. Last but not least, fear and greed meet in the desire and initiative to request a revision, the same author shows, because he sees in the report a saving solution, although it is not always, and through the imperative to have this report, psychological comfort is desired that everything possible was done to know the concrete situation.[39]

Other authors have analyzed the costs of such an approach compared to the possible losses in the situation where the report would not be realized, concluding that, at least from a financial point of view, expenses can be prevented,[40] and from the perspective of opportunity, they have emphasized that always the M&A field has been uncertain, so it's great that this review can at least provide a brief but specialized opinion.[41] Another author was not of the same opinion, who considered that this report can specify, but not precisely, the level of competitiveness and the profitability of the business idea through the purchase of the business, based on a calculation formula that is based on three elements that are always in view of the target market: cost, utility and reliability.[42]

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[37] J. A. Scharfman, *Hedge Fund Operational Due Diligence*, John Wiley & Sons, Inc., New Jersey, 2009, pp. 49-51.
[38] Ibid, pp. 54-56.
[39] P. Howson, *Commercial Due Diligence. The Key to Understanding Value in an Acquisition*, Bloomberg Press, 2006, p. 15-16.
[40] G. Cullinan, T. Holland, *Due Diligence Strategy*, Bloomberg Press, 2002, p. 6.
[41] Ibid, p. 44.
[42] G. F. Grebey, *cited work*, p. 46.

Although up to this point we have only analyzed the benefits created for the buyer by this operation, there are opinions in the literature according to which the seller also enjoys advantages, such as knowing a clear manifestation of the buyer's will to contract with him, identifying a lever in an eventual litigation, for the tortious liability of the buyer, if he terminates the negotiations in an untimely manner, causing damage to the seller.[43]

Another author shows that, in transactions, the only thing that should be assumed by the buyer is the extremely large number of problems waiting to be discovered, so he recommends that buyers move from "autopilot", a posture in which , due to passivity, there is a very high possibility that the designed business plan will not be successful, in the "fighter pilot", where the buyer, on his own initiative, researches the possible problems of the business.[44]

Last but not least, what follows after the completion of the report is the first step of integration, in the sense that the respective recommendations made by the specialists in the content of the document are to be discussed by the buyer and seller together and materialized, if the contracting intention has not undergone changes. In this sense, it is specified that there would be other stages of negotiations and one of concretization.[45]

6. Conclusions

There is no action, at least in business, that does not present risks, and through all these means and operations that arose over time, the aim was to reduce as much as possible the risk to which the investor is exposed. From this point of view, and in accordance with what was expressed by the majority of the doctrine, the due diligence report is a sine qua non condition of such business ideas, through which the existing legal situation of a business is completely taken over. Also, as judicial practice shows, this operation is resorted to more and more often, even when, with minimal diligence, this step could be avoided. The reason lies in the faith that the contractor has in the vast experience of the advisers in transactions, and from this reporting time, the legal one, the starting point, other forms have appeared, such as technical, financial, etc.

But there are also weak points, which start from the simple misqualification of this analysis, that of a saving solution from any risk, any danger, 100%, which is impossible and absurd, since a person, no matter how experienced in that domain, he cannot work with some information that he does not have or cannot reasonably receive, as is the hypothesis of the litigation section, since that is where the random element comes in, and waiting for the court's solution to authenticate the contract would not seem to be the best idea, as the business idea could, due to the long time factor, suffer mitigations, and events such as unexpectedly high inflation could throw all plans upside down.

Between all these pluses and minuses, we conclude that the due diligence report has earned a privileged place in the commercial circuit, where the desire for everything

[43] R.L. Brown, *The Concise Guide to Mergers, Acquisitions and Divestitures*, Palgrave Macmillan, 2007, p. 181.

[44] B. Hennessey, *The due diligence handbook for commercial real estate*, Create Space Independent Publishing Platform, 2015, p. 92.

[45] R. Gleich, G. Kierans, T. Hasselbach, *Value in Due Diligence. Contemporary Strategies for Merge and Acquisition Success*, Gower, 2010, pp. 140-142.

to be as clear and predictable as possible is the engine that urges buyers to choose this means so often and appreciated over time.

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