**Making A Merger Happen - The core components and key steps in a merger process**

This article is a follow on article to the article that discussed the need to do a rigorous evaluation of the merger prospect before engaging in a formal process. In this article, we discuss the core elements and steps to be taken when you are engaged in a formal merger process.

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| Top tips* It is important to invest in the up-front planning and scoping the merger process.
* A merger process is likely to be a new and very different experience for both organisations, so it is wise to get good professional advice and put an experienced project manager in charge of the day-to-day management of the process.
* Communicate, communicate and then communicate some more.
* Completing the merger is only the beginning. The real work will be in successfully integrating the two organisations, realising the merger benefits and getting the culture of the merged organisation right.
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**1. Appoint champions for the merger process**

The champions for the merger should be the chairpersons of the merging organisations. The two chief executives need to play a key role in supporting in the chairpersons throughout the process, reporting on progress and bringing items requiring decision to their attention. This group will oversee the process, agree the terms of reference for the merger process and review progress.

A joint merger team should be established with equal representation for both parties. The team should be led by the two chief executives and include, where relevant, the respective heads of HR & Finance and be supported by appropriate professional advisors as and when required. Members of the team will be agreed by the process champions. The merger team should draw up a workplan for the merger process and get sign-off from the process champions.

The respective boards of directors should also consider establishing a sub-committee to monitor the process.

**2. “Communicate, communicate, communicate.”**

Let staff, management, beneficiaries, funders, volunteers, patrons, etc. know that a merger process is taking place and provide regular status updates, even when there isn’t much to report. It is also important to listen and respond as best you can to concerns and fears that may be raised.

The respective organisations will have responsibility for their own internal communications (staff & clients) and public communications (funders, media, general public etc.) should be agreed and managed by the merger team.

**3. Be clear about confidentiality issues**

Certain information needs to be kept confidential throughout the process, for example, certain financial information. Identify what needs to be kept confidential and agree who can/needs to have access to this information, for example, the merger team, professional advisors etc.

Letters of intent and terms of reference (memorandum of understanding) should be exchanged once it is agreed that both parties are serious about merger. This letter will set out the requirement to maintain confidentiality in respect of identified information received from the other party.

**4. Agree on the legal structure and governance of the merged entity**

There are several options for the legal means of creating one organisation. For example:

* Create a new holding company, with the existing organisations continuing as subsidiaries.
* Create a new company and transfer activities, assets and liabilities from the existing organisations to the new company.
* One of the existing organisations transfers its activities, assets and liabilities to the other.
* One of the existing organisations becomes a subsidiary of the other.

There are advantages and disadvantages to the different possible options, so the Boards of the respective organisations will need to agree on the best legal and organisational structure for the merged organisation. The merger team should prepare options on the legal structure of the merged organisation and submit them to the process champions for consideration and who will bring them to their respective boards (preferably with an agreed recommended legal structure).

If difficulties are encountered in achieving agreement or in resolving issues, the process champions may decide to appoint a mutually agreed external facilitator to assist in finding an acceptable agreement and resolution.

Need to check that the organisation’s constitution give the necessary legal authority to instigate a merger. Legal advice may be needed to confirm this.

The approach for the legal transfer and merger will need to be determined and agreed.

If a new organisation has to be set up, the set-up process will need to be started early. It can take time to agree the constitution of the new organisation and obtain charity registration.

Governance

* As part of agreeing the new constitution, the following will need to be considered and agreed:
	+ Who will be the organisation’s board directors?
	+ What will be the governance arrangements for the merged entity?
	+ Size of the board, skills mix, prospective chair, interim arrangements, etc.
	+ How will they be appointed?
	+ How long should their term of office be?
	+ What officers should the new organisation have? (e.g. Chair, Treasurer, Secretary)
	+ What will be the process for selecting and appointing the Chief Executive and other senior management roles (skill requirements, job descriptions, selection process, etc.)?

In the case of charities, implementation of the necessary changes (such as changes of name, notifications to staff and beneficiaries, changes to trustee bodies and members in the case of membership bodies, changes to constitutional documents, notifications to and consent from regulators (e.g. Charities Regulatory Authority, Companies Registration Office, Revenue, etc.), confirmations and assents from contracting bodies; dissolution of the ‘remainder’ charity will have to be considered and addressed.

Membership

* Who are the current members of the respective organisations?
* Will all the existing members from each of merging organisations continue to be members?
* Is there any need for new categories of members?
* Is the membership structure flexible to take into accounts any future members?

**5. Identify the financial and operational framework**

Part of the early merger process talks will need to identify the financial and operational framework for the merged organisation. The following will need to be considered:

* Which activities and services will be continued in the merged organisation?
* How are those activities and services to be funded?
* Will the merged organisation undertake new activities or discontinue existing activities and what are the financial implications?
* What will be the organisation structure for the merged entity?
* What will the overhead costs be? Are there savings to be made?
* The financial strengths and weaknesses of each party to the merger need to be identified and shared. Openness and honesty is absolutely essential.
* Detailed financial information should be prepared by each party to the merger and included in the merger pack.

**6. Agree the merger pack for the due diligence**

Each party should prepare a merger memorandum summarising key information and draw together various documents for inclusion in a pack to be shared with the prospective merger partner.

The respective Boards must ensure that the merger is in the best interest of their organisation’s clients and should therefore, investigate the potential merger partner by undertaking a formal due diligence process.

Professional advice from accountants and solicitors may be needed for at least some of the areas.

The information required for the due diligence report from each party is likely to cover the following:

* + **Executive Summary** - maximum of 2 pages, highlighting the features in the pack which follows.
	+ **History and Description**
	+ History and development of the organisation and its activities.
	+ How activities are funded.
	+ Description of current projects and services.
	+ Overview of external environment, such as future opportunities, other organisations offering similar services, trends and changes.
	+ The case for merger, explaining why merger is an appropriate option at this stage.
	+ **Management and People**
	+ Organisational structure.
	+ Details of all staff in post, giving nature of employment (permanent or temporary), rate of pay, job title, gross pay, pension contributions, length of service and any entitlements, if applicable.
	+ Summary of terms in contracts of employment
	+ Copy contracts of employment
	+ Details of staff policies, such as recruitment, training, equal opportunities, sick leave and other.
	+ Copy of staff manual if available.
	+ Staff relations and details of any trade union representation.
	+ Details of pension scheme and indication of funding position.
	+ Details of volunteer base, how organised and policies, such as payment of expenses.
	+ **Financial Information and systems**
	+ Copies of the audited accounts for the past three years.
	+ Copy of the budget for the current financial year.
	+ Copies of management accounts for the current financial year.
	+ Copy of the current cash flow forecast.
	+ List of current and previous year funders and the services/projects being funded and for how long.
	+ A description and assessment of the systems of internal control.
	+ **Premises**
	+ Details of occupied premises to include location, form and terms of tenure, site area, current usage, date of acquisition, costs and subsequent expenditure.
	+ Lease terms and length of lease where applicable.
	+ Details of last professional valuations, if any.
	+ Details of impending or deferred repairs if material.
	+ In the case of any let properties, details of the tenants, terms of lease, rental income etc.
	+ Contracts
	+ Details of other contracts in existence, such as leased equipment
	+ Details of contracts for services where organisation has a commitment to provide a service, such as service level agreements.
	+ **Assets and Liabilities**
	+ An analysis of the main assets and liabilities.
	+ Details of any current, pending or threatened litigation or legal proceedings.
	+ Details of any material long term and/or onerous contracts.
	+ Details of any contingent liabilities.
	+ Details of major items of capital expenditure over the period and estimates of outstanding commitments.
	+ Details of banking facilities available.
	+ Details of insurance cover.
	+ Details of staff pension arrangements and any deficits, surpluses and guarantees on pension schemes.
* **General**
* Any other factors which might materially affect merger prospects and any other matters with are relevant in the context of a merger.

**7. Agree a timetable for the process**

While it can be difficult to estimate how long a merger process will take, it is important that an outline timetable for the key stages be developed. The timetable should also set out key review checkpoints at which the process is reviewed by the process champions and the respective boards and decisions taken as to whether to continue with the process or not.

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