



VENABLE

Nonprofit Mergers, Alliances, and Joint Ventures: Options, Best Practices, and Practical Tips

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Venable LLP, Washington, DC

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Upcoming Venable Nonprofit Events

Register Now

- **March 15, 2018:** [Sexual Harassment: What Should Your Nonprofit Be Doing to Keep Itself Out of the Headlines and Out of Legal Hot Water?](#)
- **April 19, 2018:** [Post-Award Noncompliance Disclosures and Audit Resolution](#)

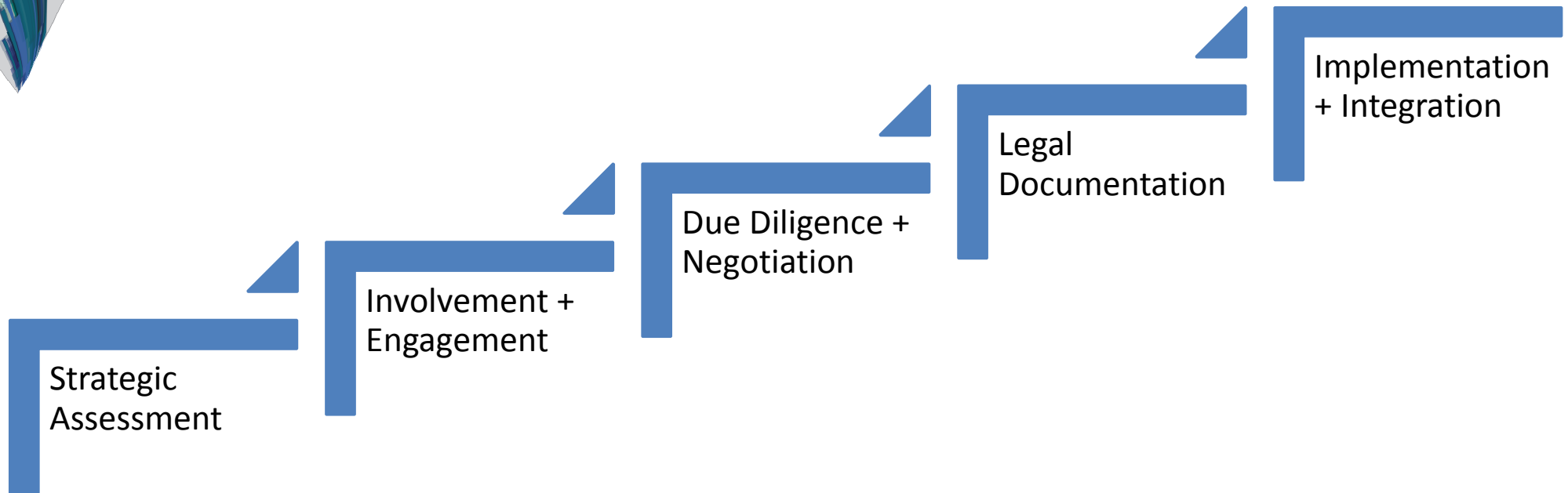


Overview

- Setting the Stage
- Going from A to Z
- Common Deal Structures
- Case Study: Humentum
- Key Legal and Non-Legal Considerations



Steps in the Combination Process





Why Start Down This Road?

- **Vision Realignment:** Enlightened organization/board has visionary goals + sees limitations of current model and/or situation
- **Membership/Funders/Services:** Competition for a limited market of members/funders/attendees/consumers
- **Sustainability or Expansion:** Assure continuance or enhancement of programs through collaboration
- **New Opportunities:** Maximizing resources, expand geographic focus or footprint, broaden revenue sources



Contemplating Organizational Change

- Define strategic vision + goals
- Identify your “fit”
- Analyze potential synergies + practical implications
- Outline rough concept
- Designate your dealmakers



There is No One Size Fits All Approach

- What leads to success?
 - Mission focus
 - Flexibility in pursuing mission
 - Not in an immediate crisis
 - A lack of divisiveness
 - Clarity regarding desired outcomes
 - Positive relations with potential partners
- Roadblocks
 - Autonomy concerns
 - Lack of trust
 - Self-interest
 - Organizational culture



Typical Legal “Life Cycle” of a Deal

Adopt Letter of Intent

- Most transactions formally begin with execution of a non-binding letter of intent (“LOI”) that outlines a roadmap for the transaction. LOIs typically serve as the basis for formal negotiations toward a definitive agreement and outline terms such as the transaction structure, timeline for due diligence and closing, and requirements for confidentiality and non-disclosure.

Negotiate Combined Structure

- The appointed representative(s) should negotiate how they envision the combined organization operating. Details about board seats, officer positions, committees, membership dues and categories, budget and financial matters, staff and benefit provisions, program continuation, oversight and funding, and related governance and operational issues should be discussed.

Conduct Due Diligence

- The parties gather sufficient information and documents in order to ascertain the financial and legal condition of the other organization, to identify any potential concerns (prior, current, or future) that might influence a decision to move forward with the transaction. Due diligence is the step which requires the largest commitment from each party and a great deal of analysis, but will mean the difference between a gamble and an educated guess in the decision to consummate the transaction.



Typical Legal “Life Cycle” of a Deal

Finalize + Sign Agreement

- The Definitive Agreement is a more detailed document than the executed LOI, and will reflect the terms agreed upon by the parties. Each entity must appropriately approve the transaction following the procedures of applicable state nonprofit corporation laws and each entity’s governing documents, and obtain any required governmental authorizations.

Closing Conditions

- Parties usually agree on a set of specified conditions that must be satisfied or waived before a transaction is consummated. The failure to satisfy a condition gives the other party obligation to consummate a transaction between the signing is subject to customary conditions, including completion of due diligence, receipt of regulatory approvals and third party consents to existing contracts, and that there is no material adverse change since execution of the Definitive Agreement.

Stakeholder Notification + Systems Integration

- Develop an internal and external strategy for educating staff, board, clients, regulators, and the general public about the transaction, as well as to address the post-transaction growing pains.



Due Diligence and the Identification and Mitigation of Risk

Look Before You Leap



Key Hot Spots

- Contractual commitments
- Pending claims
- Employment practices compliance
- Data privacy practices
- Adequacy of insurance
- Tax-exemption
- Conflicts of interest
- Corporate separateness



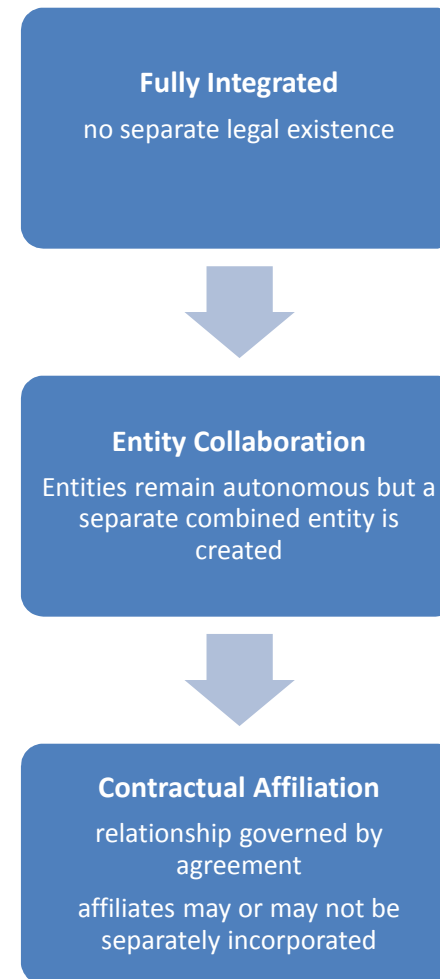
Needs Drive Structure

- An nonprofit interested in combining with another organization has several structural options to consider.
- Each types of combination involves different legal steps and procedural requirements and have varying benefits and considerations.
- Often decisions to combine are based on legal, tax or economic concerns, sometimes power and politics will dominate the decision-making process, and usually it is a combination of all of these factors.



Types of Combinations

- Merger or Consolidation
- Acquisition of Dissolving Entity's Assets
- Program or Entity Acquisition
- Joint Venture/Program Collaboration
- Shared Space and Resources





Case Study: Humentum

- Who:   
- What: Statutory Merger + Strategic Affiliation
- Why:
 - Challenges facing the sector are increasingly complex and numerous
 - Difficult to solve these challenges alone with legacy areas of focus
 - Requires both global network and locally relevant solutions
 - Leverage strengths of each organization



Humentum's Aspiration

Vision

A just and sustainable world with a trusted and thriving social sector.

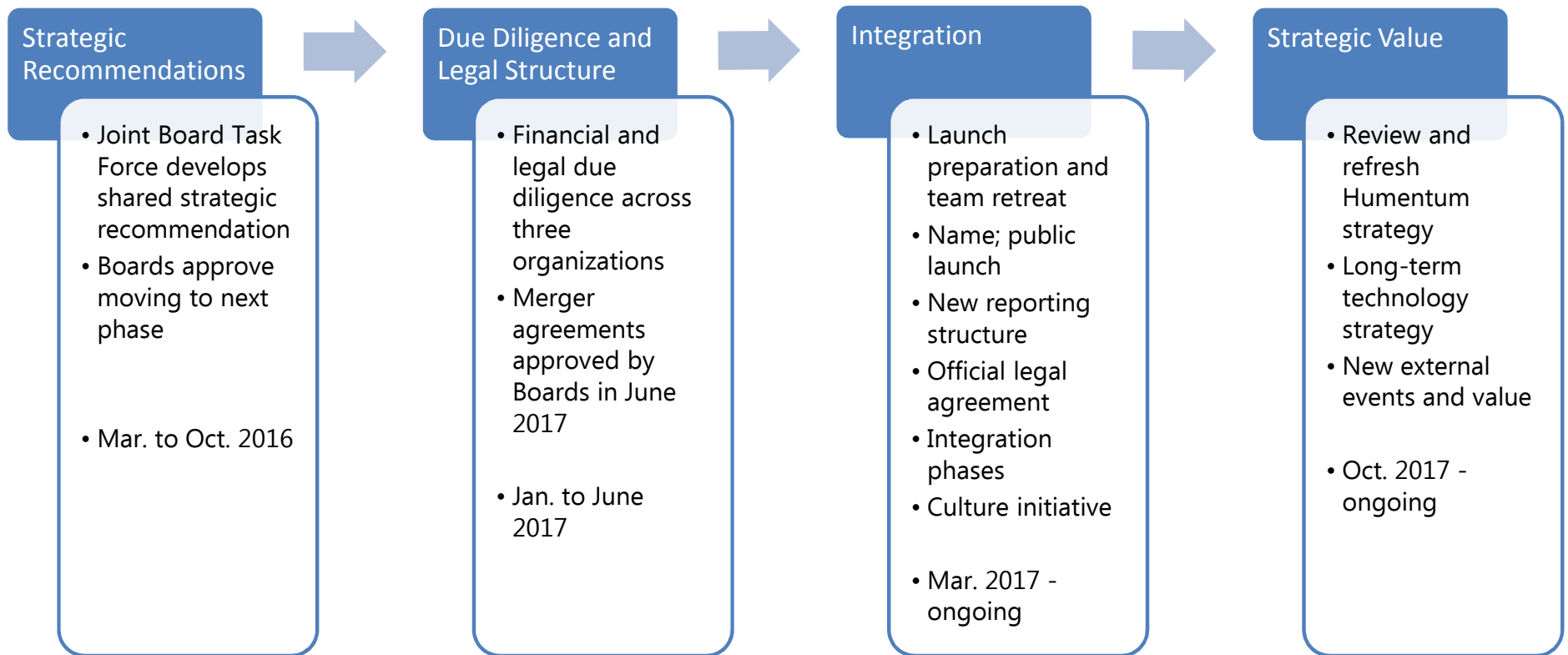
Mission

To inspire and strengthen operational excellence in the social sector.






Humentum's Journey






Agreement Drafting Considerations





Key Takeaways + Lessons Learned

- The process will take time – A to Z is not Zero to Sixty
- Change is hard
- People may leave
- There are costs and benefits (short, mid, and long-term)
- Reach out to donors, supporters, and membership early on



Key Takeaways + Lessons Learned

- No “One Size Fits All” Form for Combinations
- Necessity of Due Diligence - Look Before Your Leap
- Understand What Liabilities You are Retaining, Avoiding, or Accepting
- Document That Understanding in Clear Terms
- If Things Do Go Wrong, “Hang Together” If You Can



Questions?

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