

MERGER OF LAW FIRMS: MANAGING THE PROCESS OF MERGING LEGAL PRACTICES
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By

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Learned brothers and sisters, Honourable members of the Tanganyika Law Society

INTRODUCTION

It gives me tremendous pleasure and I feel very proud to have been invited to make this presentation to the members of the Tanganyika Law Society. I am pleased and proud for two reasons. In the first place, in my professional lifetime I have never served as a mentor, a lecturer or an instructor in a manner sufficient to qualify me to be singled out for this kind of activity from the population of the unquestionably better qualified and more experienced learned sisters and brothers in our jurisdiction. Secondly, the theme of this seminar is quite close to my professional heart. In the more than twenty years of my life as a private legal practitioner, I have travelled a very interesting, if also long, route which has left me with a passion for two things, one being practicing as part of a team as opposed to solo practice and the other being using mergers as a tool of growth of legal businesses.

Allow me first to outline where I am coming from. When I left employment as Company Secretary at the Tanzania Investment Bank in 1992, there were hardly more than two firms which I could join. The successful solo practices of the time were not inclined to take on a new person at the level of a partner. I therefore had no option but to set up a solo private practice under the name and style of Justitia Advocates. Within a month of practicing individually it dawned on me that even if there were signs of a good future in terms of client base and revenue, the sheer magnitude of the incoming business would choke me. That realization in turn inspired me to consider and eventually do a merger of this solo practice with another solo practice known as Maajar Law Office to form a new rebranded firm of two partners under the name and style of Maajar and Rwechungura Law Office. I experienced the growth of this new firm into a larger law firm, with partners

joining and others leaving but eventually evolving into a larger firm of a total of four partners under a new name Maajar, Rwechungura, Nguluma and Makani, Advocates. My partners and I then conceived and implemented the complete merger in 2006 of this law firm with another law firm known as Epitome Advocates to form a new firm known as Rex Attorneys. I retired from Rex Attorneys in January 2009 intending to start different business pursuits but soon the lure of private legal practice was too irresistible and I found a firm known as CRB Attorneys. In January 2010 this new firm entered into a collaboration arrangement with a South African law firm known as Deneys Reitz and changed the name brand to CRB AFRICA LEGAL, which I am currently managing. I therefore feel proud that, even if subconsciously, your leadership gave me this opportunity to share with you my humble experiences in managing mergers of legal practices.

SCOPE OF THE PRESENTATION

I have decided to modify slightly the scope of the presentation and focus on what I consider to be very important in the process of merging firms, and that is the management of the merger process. We will together discuss what I consider to be early stage/pre-merger dynamics that will determine the success or failure a merger. We will also discuss the various ways through which one goes about merging practices. This will also include a short overview of the factors that influence the starting of a legal practice and, by extension, the way it may grow through a merger.

REASON AND OPTIONS FOR GETTING INTO PRIVATE LEGAL PRACTICE

Why start a private practice? Let me start by pointing out that there is a truism which unfortunately almost all lawyers in private practice are very hypocritical about and this is “what is the core motive that drove them to get into private practice”. If you asked twenty lawyers the question, the answers from eighteen would be many and varied but the true motive will not be given easily, which is “to make money by rendering legal services at a fee”. Starting and managing legal practice is essentially “*to organize the start up of a legal practice and the efficient delivery of legal services to carefully selected clients for adequate compensation and at minimal cost*”. I do not want to contest the universal duty of a lawyer to ensure that justice is available to all persons regardless of their financial means, but a private practitioner who fails to balance these two aspects in such a way that he makes sufficient money from those who can afford the services and subsidises the services rendered to the disadvantaged is most likely going to fail on both ends. A lawyer who sets out to venture down the street called “private practice” has embarked on a money making enterprise, first and foremost.

We will, for the purposes of this presentation and the discussion which hopefully it will inspire, take it that there are two broad categories of private legal organizational models. There is solo practice and what we know as partnerships or firms. On both fronts there are several options for venturing into private practice. We will term them (i) fresh start options (ii) options of joining an existing practice, (iii) mergers options and (iv) hive-offs.

- (i) **Fresh Start Options:** This category of options entails either starting solo or forming a partnership with other lawyers who are also starting afresh. Each of the alternative start up options has its downside and its high points/advantages, some of them common and others peculiar to the particular option.

The risks common to both options include but are not limited to newness of the starting individual(s) in the market and lack of experience and the burden of the startup costs. In my case, the circumstances around my last salaried job helped me to overcome the problem associated with being new in the market. My position with my last employer had given me tremendous exposure to individuals and institutions in the banking, financial, insolvency and corporate world who would eventually be my core clients. I funded the start up costs of setting up my solo practice using my retirement benefits to the cent. Fortunately I had done pre startup client hunting and there were a few pioneer clients who between them were paying fees sufficient for the new practice to be self sustaining. We live in a jurisdiction and an economic system where there are very few banks which will extend credit facilities to fund startup costs of a new law firm, because our business does not lend itself easily to forward financial planning/ projections which the banks will want to rely on in assessing creditworthiness. For this reason it has to be borne in mind that the burden of starting up could be frustrating right from the beginning. Ideally, financial planning for a new firm should be benchmarked on the availability of funds to finance the costs of the firm for the first twelve months. The most critical costs include office rent, salaries for a secretarial assistance and a clerk, appropriate office equipment, stationery and local transport costs.

The high points common to both options include the sheer satisfaction and pride of starting one's own business and the joy of being the architect of one's own visibility in the market.

The downside dimensions of the "fresh-start" solo option are not difficult to imagine. The adage that two heads are better than one is illustrative of a key

weakness of such option. The option entails the risk of the solo practitioner making and repeating mistakes which result from lack of the benefit of second opinion. To that, add the burden of having to finance start up costs from the family savings as well as the risk of excessive work load on one individual. Mistakes made by a new practice are easily noticed as everyone is watching and, from my experience, disappointed clients never return easily.

However, if the funding of startup costs is well planned for, the strongest high points of the “fresh-start” solo option include (i) the opportunity to personally brand the practice and to give it the preferred identity in the market before rolling it out to other partners(ii) taking early leadership and giving the practice a focused sense of direction which can be inherited when the practice gets transformed into a partnership and,(iii) not having to share profits with any other partner at least for a period long enough to enable the recovery of startup costs. When I formed CRB ATTORNEYS in January 2009, this is the start up model which I adopted. I resolved to spend the first six months practicing solo, forging a mission and vision for the potential partnership and drawing such rules of the game as I found to be very crucial for the growth of the business. I took on board my first three partners on July 1st 2009 after I had reached agreement with each of them on the basic elements of my dream that would not be compromised. There is always a risk of course that new partners would sign the dotted lines to join the firm since it is visibly in good business but without seriously internalizing the mission and business ethics of the firm, but with clearly defined business lines, this is easy to manage.

The fresh-start partnership option has its downside as well. There is a risk of the practice taking off as just a collection of individuals with divergent and untested visions especially when the individuals were until then strangers to each other in the professional sense. This brings with it the possibility of early conflicting interests which could cripple the firm in its infancy and give rise to dangerous jostling for rankings right from the start. If therefore this option is preferred, the players would be very advised to make thorough due diligences amongst themselves and negotiate a binding memorandum of understanding setting out the mission and vision to be subscribed to by all founder partners, setting out the rankings of partners and their respective roles, billing and profit sharing modalities. This risk management precaution is required even more strongly in the merger of existing firms as we will see later.

The highpoints of a fresh-start partnership option, if preceded by proper due diligence and thorough negotiations, include all the merits and strengths that only team work can achieve such as efficient time management, cost sharing, mutual professional support, diversification of products to reach out to all segments of the market i.e criminal, real property, corporate law services etc. The era of the lawyer who knows it all is long gone as the market wants specialization.

Joining an existing solo practice or a firm:

Joining an existing partnership is the most preferred route in our jurisdictions. Over the past ten to fifteen years we have experienced a groundswell of new Law firms/partnerships and the rapid growth of old ones in Tanzania Mainland. Accepting new lawyers into an existing law firm is one way of growing the business. Many young lawyers find it attractive to join these success stories and grow from within them and, conversely, the law firms need to recruit young lawyers, train them and wean them from mere salary takers into income earners capable of winning new clients and generating billable hours. Although this option has the benefit of affording the young lawyers the opportunity to join an established practice as opposed to having to start afresh, they have to do a due diligence on the existing practice and negotiate with owners to identify areas of common vision and to ascertain if a business model exists that gives them a career path within the firm. Founders of existing firms will inevitably have gone through all the birth pangs of setting up businesses and making them successful. Understandably they guard their businesses jealously and they do not take too kindly to new entrants who take the success stories for granted and who prematurely expect full participation in the profits of the firms. The challenge here is the fact that, being an attempt to get into private practice for the first time, the aspirant would be bargaining from a weak point and would have to succumb to the dictates of the owners. Unfortunately the lure of success in these law firms has led many a young lawyer to plunge into the sea without first gauging what demands will be made on their professional performances.

On the part of the partners in an existing law firm, recruitment of fresh graduates or practitioners with relatively short experience could be the best alternative for the firms growth as opposed to merging with another existing law firms PROVIDED the recruitment goes hand in hand with an in-house training

programme tailored to help the recruits mature into the vision and mission of the firm, and, as a result, contribute meaningfully to the growth of the business.

(ii) Merging existing practices:

A merger of two or more law firms is not, strictly speaking, starting a completely new legal practice. It could be a merger of equals whereby each practice winds up its affairs and the firms agree to register a new firm which inherits the businesses of the merging firms, re-launching the combined businesses under a fresh brand. On the other hand, you could have a merger entailing the acquisition of one practice by another whereby the business of one practice is acquired by the other. This is the case where the acquiring firm is so well positioned in the market that rebranding would do harm to the business.

Mergers are a business management tool. Effective management of a legal practice includes the readiness and boldness to surrender to the big scenario if the market forces dictate so. In my experience, the most challenging merger was the one in which I was a key player entailing the merger of two existing law firms, whereby each firm wound up its business, distributed profits to its partners, transferred ongoing business, clients and some assets to a completely new firm . It all started with an assessment of what the future market will expect of law firms in Tanzania followed by a laudable if also a pioneer visionary decision on the part of the partners of both firms to merge and launch a new legal practice. The negotiations between the partners of the two firms were conducted patiently and over a period, resulting into a memorandum of understanding that not only spelt out a roadmap to the merger but also addressed key issues like financial contribution to the initial capital and operational requirements, the respective rankings and roles of the partners in the merged outfit, the inheritance of businesses and employees and many other aspects which I may confidently vouch are the reason why the firm is solidly on the rise.

It is not easy at all to wind up a successful practice just for the sake of merging with another firm. Mergers are often inspired by the desire to “raise capacity to make money through rendering better and diversified services to more clients

for a fee". Let us look at a few situations that could inspire and in some instances force mergers:-

- a) A merger could result from the need to run away from financial distress on the part of one side of the merger. For very many reasons firms with very competent and capable lawyers could find themselves in distress, with partners no longer seeing things eye to eye, leading to a few of the partners to leave, taking their clients away and merging business with an existing firm;
- b) A merger could result from growth of business on the part of the merging practices. Each of the merging firms gets to a stage where, through good marketing and client handling, the clientele has grown to such level that the firms, standing alone, can no longer satisfy the market demand for their services. In such situations, recruitment of junior lawyers alone cannot be the solution and each firm needs several experienced income earners, capable of bringing in business and delivering services. This situation will inspire the two firms to merge and keep, if not enlarge, their combined market share; and
- c) The need to diversify and specialize could be the driving force behind a merger. A typical merger driven by this need is where you have a very good litigation law firm which is thoroughly versed in court procedures. Its lawyers have the magic to churn out pleadings which can hardly be faulted. They can argue so ably and convincingly that no court will not be impressed. But then the nature of disputes that we face in the modern world has undergone a transformation and to be a good litigant now requires not just good courtroom skills but also a grasp of fine details of the subject of the dispute.

Mergers are a tremendous opportunity for lawyers to re-invent themselves. The modern day landscape of our profession can no longer be well served by the old mindsets of lawyering which the majority of us carted out of school of law. Above all else the need to work in teams is becoming an imperative for our professional success and growth. Individuals cannot realize their full professional abilities when working as individuals or in small groups, and we should learn to allow ourselves to be influenced by others and influence others too by being part of larger working units as firms.

I have always wondered what is it that is still appealing about staying avoiding forming or merging firms in Tanzania. My speculation is that we individually focus too much on the differences between us and other persons in the profession and that blinds us from the advantages which firms can bring to us. The merging process is nothing else but an interaction of more than one human being. Being what we are, human beings, we have differences. Some are temperamental, some rooted in the level of our intellectual brilliance, some tribal, some age related, some ethnic, some religious, some unexplainable, and, most debilitating, some are founded on the level of greed. When you preoccupy your mind with these differences, mergers will be anathema to you. The starting point towards a successful merger is to build in you the ability to marginalize these differences and focus on the congruent elements in our characters and nurture them until they crowd out the differences.

CONCLUSION

As I said at the beginning, I might have fallen short of your expectations by deliberately avoiding borrowing from any sourcebook or the web. The reasons, if I may repeat myself are, first, my lack of training skills and, second, my conviction is that when the modalities and skills of starting, managing and merging legal practices are items you will not get in a manual. I found it more honest to share with you my own experiences in this jurisdiction

Thank you for your attention.