

# Effective “Human Due Diligence”

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When entering into a new business arrangement, whether it is a newly established team, a joint venture, specific project, merger or other alliance, there is a real need for businesses and individuals to find ways to check that the project will work. Conventionally, they will carry out financial due diligence but often they will fail to undertake a similar exercise to ensure that the people and relationship issues are also addressed.

While the benefits of successful collaboration can be significant, the establishment of a new joint venture is far from risk free. Indeed a high proportion of joint ventures fail to deliver the desired results often because of a breakdown in relations between partners. This can present those investing money, time and reputation in such a venture with serious and unwanted difficulties.

So often, new ventures fail or are handicapped because those involved find out, too late, that they do not share the same values or objectives - or have not considered the underlying concerns or interests that really motivate them. The pressure to do the deal can lead to the key players assuming that everything will be alright, often suppressing private fears or doubts. They do not build in mechanisms to deal with the difficult times.

We know that effective collaboration requires high levels of trust to realise its full potential. If an alliance is entered into without a full understanding of the real interests of each party, or is based on misunderstandings or misplaced assumptions, disappointment, disillusionment and the eventual breakdown of trust can be the result.

Thus, up-front investment to help individuals to understand better their different interests and assumptions, hopes and fears, concerns and aspirations, expectations and objectives, will lay strong foundations for the personal relationships on which trust is based. These foundations will help ensure more productive, more effective, less costly alliances, which are less likely to break down.

What is needed is a structured, non-binding process to allow potential partners to explore issues in complete confidence, probably using a combination of private and joint meetings.

Such a process can help build greater understanding of what each party wants to achieve through the business arrangement, what each brings to the collaboration and where they have genuine shared interests. It can open up discussion of what each party really expects of the other and of the potential constraints that may frustrate expectations. Above all, it can get under the surface and identify those issues that may really worry potential collaborators.

Building on this exploration, the process can help partners identify options for addressing potential problems. As with other forms of due diligence, in some cases the concerns raised may result in a decision not to proceed. While this may be disappointing, it is far better to discover this at an early stage than when the venture is up and running. More likely, the process will uncover the kind of concerns which can be addressed as part of the

establishment of a well-founded platform for going ahead – and which will lead to more effective problem-solving and dispute management in the future.

It is suggested that working with a third party independent facilitator will add real value to this human due diligence. Whether described as a mediator or facilitator, the third party can provide the structure or framework to give those involved the safety and confidence to address difficult issues. A good process will offer participants the opportunity to address these sorts of questions:

- What are your real objectives in this project?
- What do you really need to achieve out of this project?
- If you achieved this, what would that mean for you?
- What do you need to **do** today to achieve this?
- What do you need to **say** to the others to help you achieve this?
- What do you need to hear from the others to help you achieve this?
- What do you think that the others really need out of this?
- What are your main concerns at this stage?
- What do you think are the others' main concerns at this stage?
- What is the common ground?
- Where might there be misunderstandings?
- What do you think the others need to hear from you at this stage?
- If you are going to work together really well in the future, what needs to be done?
- What will be the consequences for you if this does not work out (a) now? (b) later?
- What will be the consequences for others if this does not work out (a) now? (b) later?
- If you can't find a mutually acceptable way to work together, what will happen?
- Reflecting on these questions, what protocols do you need to develop to help deal with any future problems?
- What are the options for moving forward?

These questions ensure not only (a) much reflection on a party's own circumstances but also (b) real consideration of the others' point of view – stepping at least partially into the others' shoes. As preparation for a subsequent meeting, that can be very powerful.

A questionnaire containing these questions can be issued and completed in advance and returned to the facilitator. Or it can be used on the day of meetings, to inform the facilitator and/or by the parties themselves. One example is to set up a joint meeting, chaired by the facilitator, and invite each party to go through the responses one by one, listening carefully to the other's responses. The parties can alternate in answering, to achieve parity and a sense of fairness. This can be tremendously enlightening – and challenging. It is just the sort of thing that people find difficult to do by themselves.

The facilitator can follow the standard mediation approach of meeting with parties privately and/or together, as seems appropriate in the circumstances. Clearly it will be essential to set this in the most helpful context: using a comfortable venue, eating together to build rapport and set the scene and laying down appropriate ground rules. Exploring and really understanding the underlying issues before looking at options for moving forward and coming to any conclusions is critical. Again, the facilitator can play a valuable role here.

Depending on the group dynamics, there may be opportunities to establish small working groups with specific tasks, to report back to the larger group. Perhaps key players can make presentations to decision-makers or work collaboratively across parties to seek for different perspectives. There are many techniques for group work and insights which a skilled facilitator will bring.

There may be moments to take stock and ask questions such as:

- What has been achieved so far?
- What are the areas of common ground which have emerged?
- What have you learned that has surprised you?
- What new areas for discussion have emerged?
- What do you not understand?
- What areas need further exploration at this stage?
- What do you now need to say to the other party?
- What would you now like to hear from the other party?
- What are the key issues at this stage?
- How can these be taken forward now?
- What else can you do now, in this process, to help to map a way forward?

- What are the options which are emerging?
- What do you really want to achieve now? What is your main priority?
- What should happen next?
- How can you best utilise the services of the facilitator as you go forward?

None of this is prescriptive. The questions are just illustrative. But the process is powerful. And it should be completed – after a day, or two days, or time for reflection – with an action plan, prepared by the parties. They need to invest in the outcome. What needs to be done, by whom, by when, and how? The parties may also be encouraged to formulate the “why”: what is our vision, our mission and/or our values?

Overall, the parties should leave with a clear view of what their real interests are, how they can work together most effectively and how they will deal with differences in the future. Or, perhaps, why they have decided not to go ahead at all, or with a different or reduced scope.