



## **The CFO & the Legal Department** **Judy Romano & Paul Nielsen** **McKesson**

**ACC Europe 2007 Annual Conference: The Growing Role of In-house Counsel:  
Lawyers as Business Partners**

**3-5 June 2007 Bayerischer Hof Hotel,  
Munich, Germany**

## About McKesson

McKesson's vision is to help create a healthcare system where quality is higher, mistakes are fewer and costs are lower. As the nation's leading healthcare services company, we provide pharmaceuticals, medical supplies and technologies that make healthcare safer while reducing costs. McKesson touches virtually every aspect of healthcare. For instance, McKesson:

- Is the largest pharmaceutical distributor in North America. Every day we distribute one-third of the medicines used in North America, supplying more than 25,000 U.S. healthcare locations from Wal-Mart to the Department of Veterans Affairs to community pharmacies.
- Is the nation's leading healthcare IT company, with software and hardware technology installed in more than 70% of the nation's hospitals with greater than 200 beds.
- Provides decision support software to help physicians determine the best possible clinical diagnosis and treatment plans for patients.
- Develops and installs electronic systems that eliminate the need for paper prescriptions and paper medical records and provides physicians with easy and secure online access to patient information.
- Helps prevent more than 330,000 medication errors every week through bar-code scanning technology that helps to ensure the right patient gets the right drug at the right time.

Healthcare is in our genes. McKesson is America's oldest and largest healthcare services company, with its pharmaceutical wholesaling roots dating back more than 174 years. In fact, the company created the first national drug distribution system. Today, McKesson is the largest pharmaceutical distributor in North America, delivering more than a third of all medicines used daily by pharmacies, hospitals, nursing homes and doctors' offices. For more about McKesson's history, as well as all of our current businesses, please see our online media kit.

By combining its industry-leading technology and scale with unsurpassed clinical knowledge, McKesson is helping healthcare providers deliver better, safer care while reducing unnecessary costs.

Headquartered in San Francisco, Calif., McKesson employs over 30,000 people across the nation and around the world dedicated to delivering vital medicines, medical supplies and health information technology solutions that touch the lives of patients in every healthcare setting.

McKesson is publicly traded on the New York Stock Exchange under the symbol: MCK.

Source: [www.mckesson.com](http://www.mckesson.com) > about us

## The CFO agenda

### Accounting

• SOX

• Revenue recognition

• Loss contingencies

### Risk management

• Fraud triangle

• Ethics hotline

• Insurance

### Tax

• Transfer pricing

### Corporate governance

• Comp, stock options

• Audit Committee

### Corporate finance

• Investor relations

• Auditor relations

• Capital structure

• Treasury

### Strategy and planning

• M&A

• Strategic planning

• Financial planning & analysis

Boxed topics for today's discussion as they have Legal / Finance overlap with a substantial field dimension (i.e. outside HQ)

## SOX financial controls and McKesson's Risk Controls Group

- RCG created in FY06 specifically to support SOX compliance
  - Spun off from Internal Audit
  - Reports to the Corporate Controller
  
- Focused on controls underpinning financial reports
  - Help set the overall scope and approach
  - Monitor SOX legislation, guidance and industry trends
  - Monitor status of the annual Section 404 certification process
  - Advise on control design, implementation and testing
  - Independently test to validate controls are operating effectively as reported by the Business Units
  - Track deficiencies
  - Liaise with external auditors (Deloitte & Touche)
  
- Law Dept role: stay in the loop and advise accordingly
  - Issue spotting – any material risks RCG and BU Finance aren't addressing?
  - Deficiency resolution – if in a Law Dept-related area such as contracting

## **Accounting: revenue recognition**

- Hot topic for US-listed software businesses
  - See handouts – SEC releases re HBOC, Computer Associates
  
- Classic trouble spots
  - Acceptance testing, milestones, or other contingencies in customer contracts / license agreements
  - Unintended contingencies such as promises of future functionality
  - Fraud e.g. side letters – people know (or should know) the rules but are under pressure to book orders
  
- Law Dept role: partner with Finance (technical accounting group)
  - Training to Sales and others on rev rec rules
  - Timely engagement by technical accounting in deal formation process
  - Specific controls to prevent unauthorized changes to pre-approved Ts & Cs

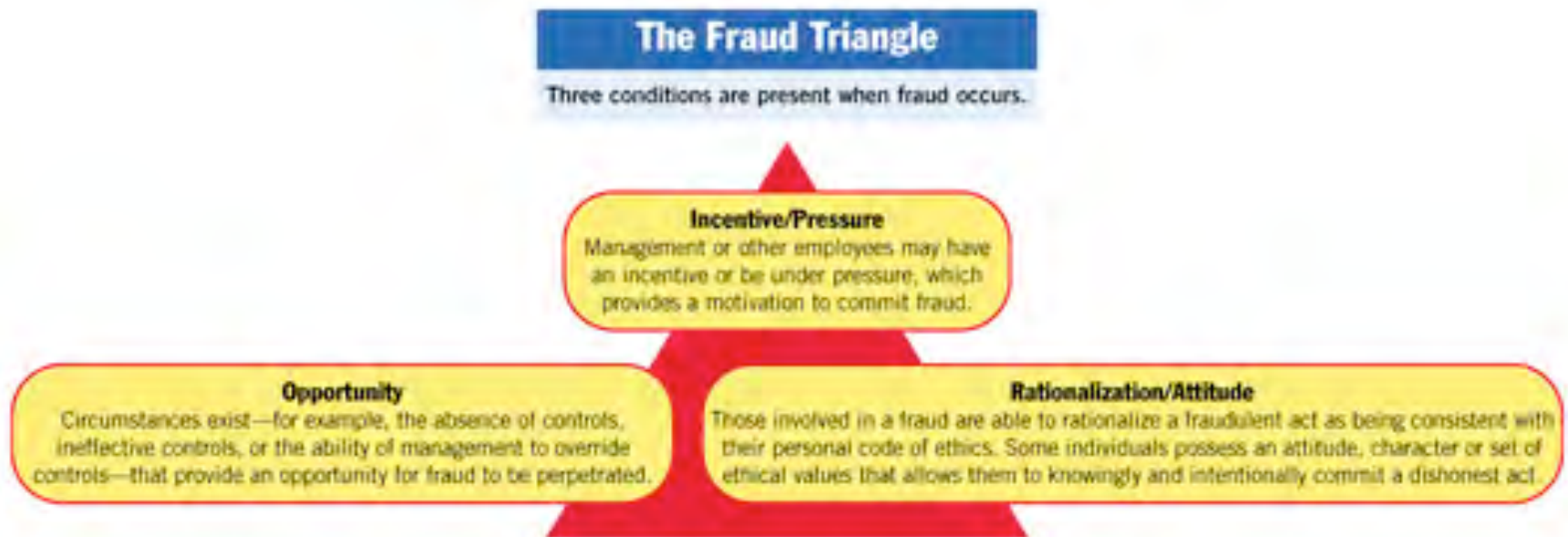
## Accounting: accruing for and disclosing loss contingencies

- FAS 5 flowchart under US GAAP:
- Law Dept role: provide timely legal input to Finance to help them make these accounting judgments
- See ACC Docket article (July '04) in handouts



Graphic courtesy Perkins Coie

## SOX financial controls: fraud triangle and SAS 99



- SAS 99: “Consideration of Fraud in a Financial Statement Audit,” AICPA (2002)
- Law Dept role: team with Finance, Internal Audit, and HR on the fraud triangle
  - Incentive / pressure – e.g. can management make their numbers?
  - Opportunity – will shortcuts (fraud) be detected? How likely?
  - Attitude / culture – ethical or prone to rationalization?

## SOX whistleblower ethics hotline

- Section 301 requirement
- HR needed to get local works council approval
  - We use a US-based vendor to take the calls
  - EU Data Protection Safe Harbor compliant
- Reports sent to corporate Legal, then returned to appropriate people in the field for action
- Early experience is most calls are HR-related complaints, not ethics / compliance matters strictly speaking
- Legal Dept role:
  - Corporate: compliance program design – overall role of Legal vis-à-vis other departments under review
  - Field: program deployment working with HR



## Insurance

- Corporate risk management
  - Designs and implements the insurance program across the entire business
  - Reports to the corporate treasurer, who reports to the CFO
  - Works with a global insurance broker
  
- Law Dept role:
  - Provide view of the business to corporate risk management to help them design and buy optimal coverage
  - Become familiar with it to invoke it if necessary and minimize the prospect of denial of coverage litigation
  - Administer the program locally if not done by someone in Finance – varies by country organisation

## Tax: transfer pricing design and compliance

### ● Design

- Look for the middle path: not too aggressive, but not inefficient
- If too aggressive, you won't know for certain until years later when you're in a high-stakes lawsuit with tax authorities – see CFO Europe handout
- But FIN 48 is now here – requires periodic assessment and disclosure of tax positions for US-listed corporations – see PwC handout

### ● Compliance

- Are the people in place to perform all necessary compliance activities?
- Will operation of the business on a day to day business conflict with the premises underpinning the design?
- Sufficiently insulated from other claims on their time?
- Complexity – if too many entities, then fewer people will truly understand and successful oversight and compliance will be more costly to achieve

### ● Law Dept role (mainly at the corporate level)

- Question the design philosophy – what are the Tax Dept and CFO trying to do? worryingly aggressive? advisors knowledgeable and disinterested?
- Compliance: support Finance / Tax / Accounting – are the right people engaged? trained and not unduly distracted by other priorities? Delivering to schedule?

## Merger & Acquisitions

- B Mngmt
- 2 Mngmt
- 3 Mngmt
- 4 Auditors
- 5 Tax
- 6 HR
- 7 Finance
- S Legal
- C Bus Dev



## Merger & Acquisitions

- McKesson's approach
  - Business Development at the center through all phases
  - Clear line of sight from field to division to corporate across all functions including Legal
  - Steady deal-flow enabling growth of internal expertise
    - Formal process maturity, lessons-learned reviews, and increasing specialization in M&A including within Legal
    - Informal – building bonds and networks from shared experience
  
- What we wrestle with
  - Corporate culture – how to measure and factor it into target selection
  - Due diligence – when's enough enough, given SOX?
  - Integration planning – how to do it well while holding down a day job

## **Financial planning & analysis and strategic planning**

- Finance as business partner, internal investment banker
  
- Financial planning & analysis: the here and now:
  - What happened: actuals vs plan
  - Why: key business variables driving financial results
  - What to do: advising management to improve operational decision-making
  
- Strategic planning: the longer-term:
  - Multi-year high-level plans (typically three year horizon)
  - Business cases for new-product introductions, R&D investment, and acquisitions
  
- Legal Dept role: also as business partner, with input to key assumptions e.g.
  - FP&A: legal risk analysis of complex contracts on large projects
  - Strategic planning: legislative and regulatory impact in highly-regulated businesses



**ACCE Europe's 2007 Annual  
Conference  
The CFO and the Legal Department**

**Padraig McCarthy  
CFO, SES ASTRA**



## **SES – who we are**

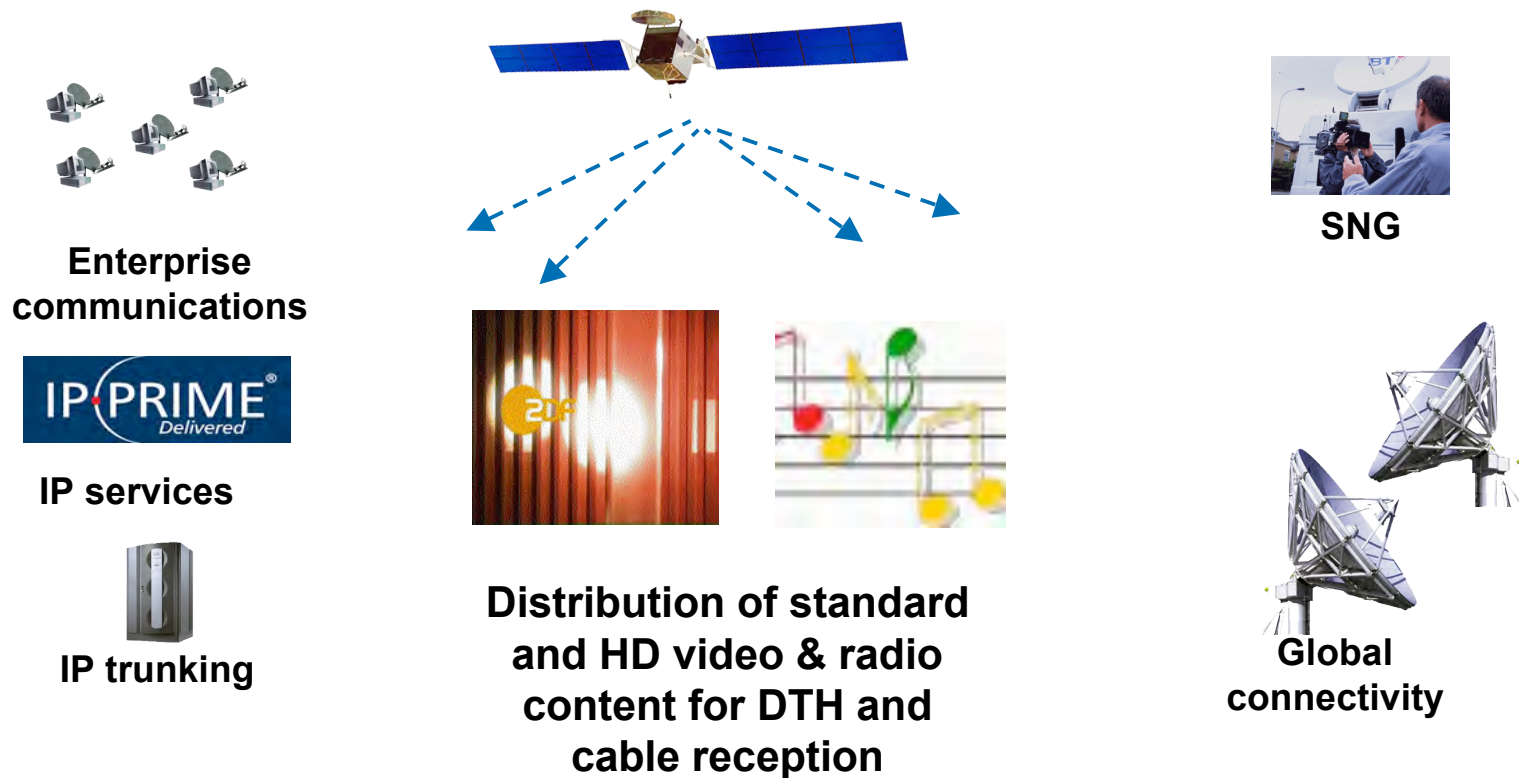
- The world's leading satellite Group
- Global fleet of 36 satellites with optimal look angles and comprehensive landmass coverage, operated through:
- Fully-owned operating companies SES ASTRA, SES AMERICOM, SES NEW SKIES
  - Majority-owned SES SIRIUS, CIEL, QuetzSat
  - Premier provider of transmission capacity
    - Media distribution and connectivity
  - Advanced satellite-centric platforms and services
    - Media and government customers



## SES – who we are

- Created in 1985 and based in Luxembourg, Europe
- At end of 2006, 1,661 staff around the world
- Listed on Euronext Paris and Luxembourg stock exchanges (SESG)

# SES' capacity business



**SES' capacity business represents 83% of total revenue**

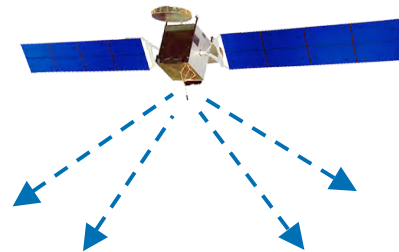
# SES' services business



**Playout,  
encryption,  
uplink**



**Interactive  
applications  
(Blucom)**



**Government  
services**



**Media platform**



**Triple play  
services -  
ASTRA2Connect**

**SES' services business represents 17% of total revenue**

## Global reach, regional market focus

- **SES ASTRA** is Europe's #1 DTH satellite service provider reaching 109 million households (incl. cable)



- **SES AMERICOM** is a major player in broadcasting for US cable services reaching some 80 million US households
- **SES NEW SKIES** is a premier provider of satellite communications services, with more than 250 customers based in 79 countries

\*SES agreed a split-off transaction with GE in which SES contributed its participations in AsiaSat, SATLYNX and Orbcomm, the AMC-23 satellite and its related business, as well as cash into a new company, SES International Holdings (SIH). SIH has been exchanged for GE's entire shareholding in SES. The announced transfer of the shares in Star One (approximately 20% of the total equity of that company) to SIH will take effect once the approval of the Brazilian regulator, Anatel, is obtained.

## ASTRA – DTH leader in Europe

### ● **Satellite Fleet**

- 13 ASTRA and 2 SIRIUS satellites for Europe
- 3 new satellites under procurement

### ● **Key Features**

- 19.2° and 28.2° East are Europe's prime orbital positions for Direct-to-Home (DTH)
- 23.5° East Direct-to-Cable slot – with development into DTH position
- Complemented by 5° East - with strong coverage of Nordic & CEE countries

## **ASTRA – DTH leader in Europe**

- **Customers**

- Over 330 customers and more than 2,000 channels & services

- **Technical Reach**

- ASTRA: 109 million households (47 million DTH/SMATV)

### **Key Financials**

- Group revenues for EUR 1.6 billion 2006 of which Astra segment revenues

2006 EUR 765 million, EBITDA EUR 604 million

## Our customers

- Europe's leading private and public television channels enter into long term contracts for satellite capacity and services



## Our customers

- Europe's leading resellers are partners of ASTRA

arqiva

GlobeCast

ORS

...T...Systems

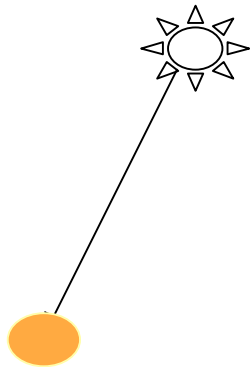
BT

APS  
An SES ASTRA Company



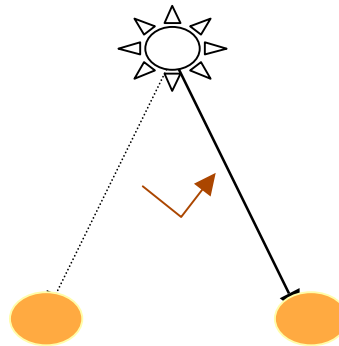
# Finding the right balance

## Score Keeper



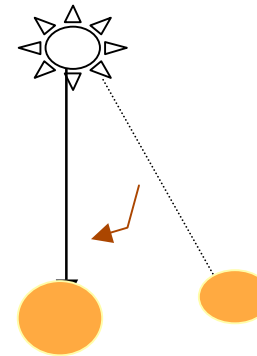
- Control Orientation
- Limited value added
- Little involvement with business

## Biased Business Partner



- Commercial Approach
- Loss of Independence
- Business view = Finance view

## Independent Business Partner



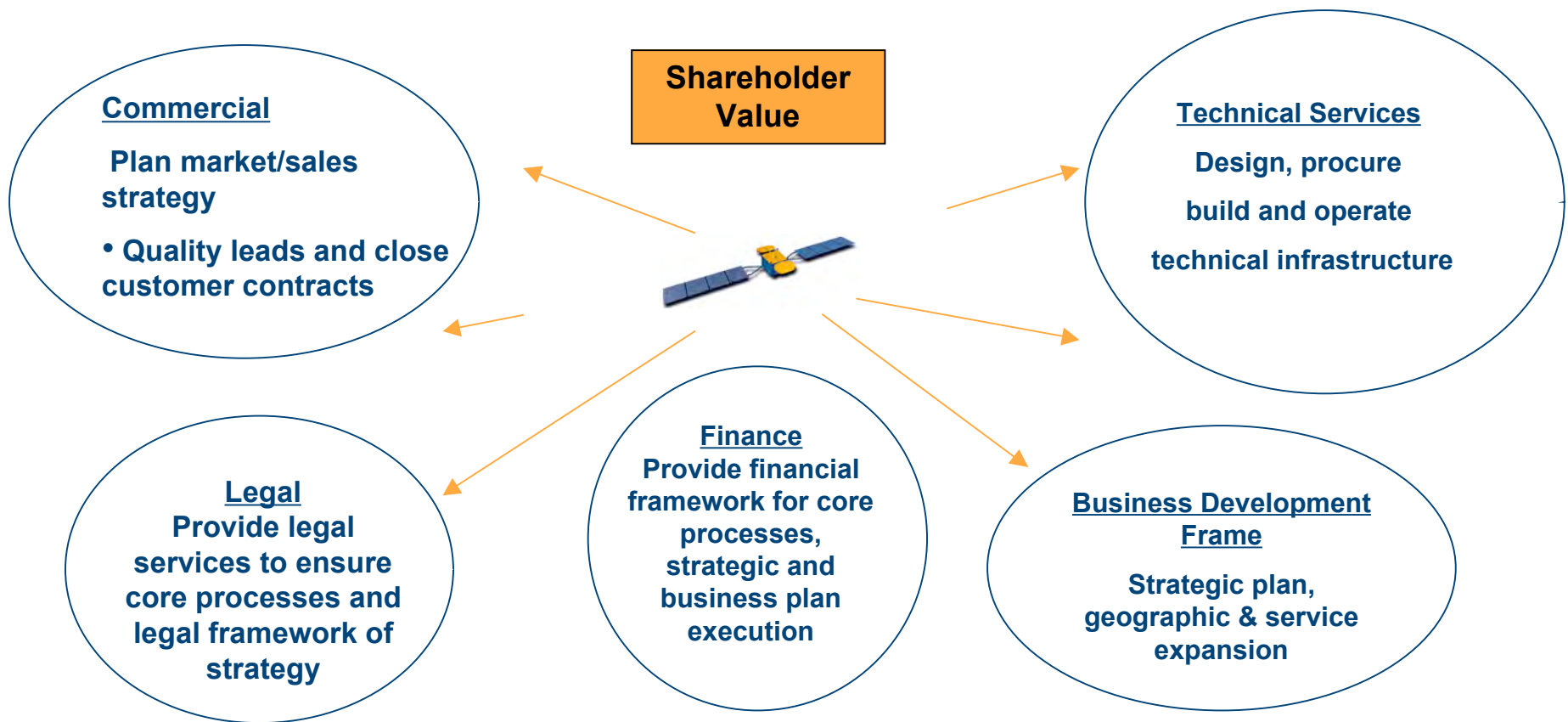
- Strong Financial Controls
- Voice of Conscience
- Commercial Approach
- Interacts with Business

Finance / Legal

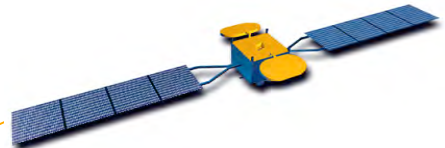


Independent Business Partners

# Cross-functional cooperation in long-term relationships and contracts



# The Legal/Finance partnership



## New Business

- Long term contracts, simplicity and clarity are key.
- Commercial/Technical/ Legal/Finance cross functional team for all new contracts.
- Always strive for best customer solution.
- Electronic workflow for contract sign-offs.

Corporate Governance  
Clear delegation of authority  
Common activities to maximise internal controls

## M & A activity

- Financial aspects within business plan
- Legal turns the plans to contracts.
- Continuous involvement Finance/Legal from early stage.

## Risk Management/ Satellite Insurance

Launch plus in-orbit insurance  
Key risk management area, led by Finance with Legal and Technical. Continuous dialogue required.

## Do's and Don'ts

- Act as a business enabler, not as a hindrance
- Advise on what has to be done to close the deal and not why it does not work
- Provide a “sales protection” partnership and not a “sales prevention” activity
- Early involvement in all key deals and agree the key issues/objectives, avoid last minutes sign-offs without any previous involvement

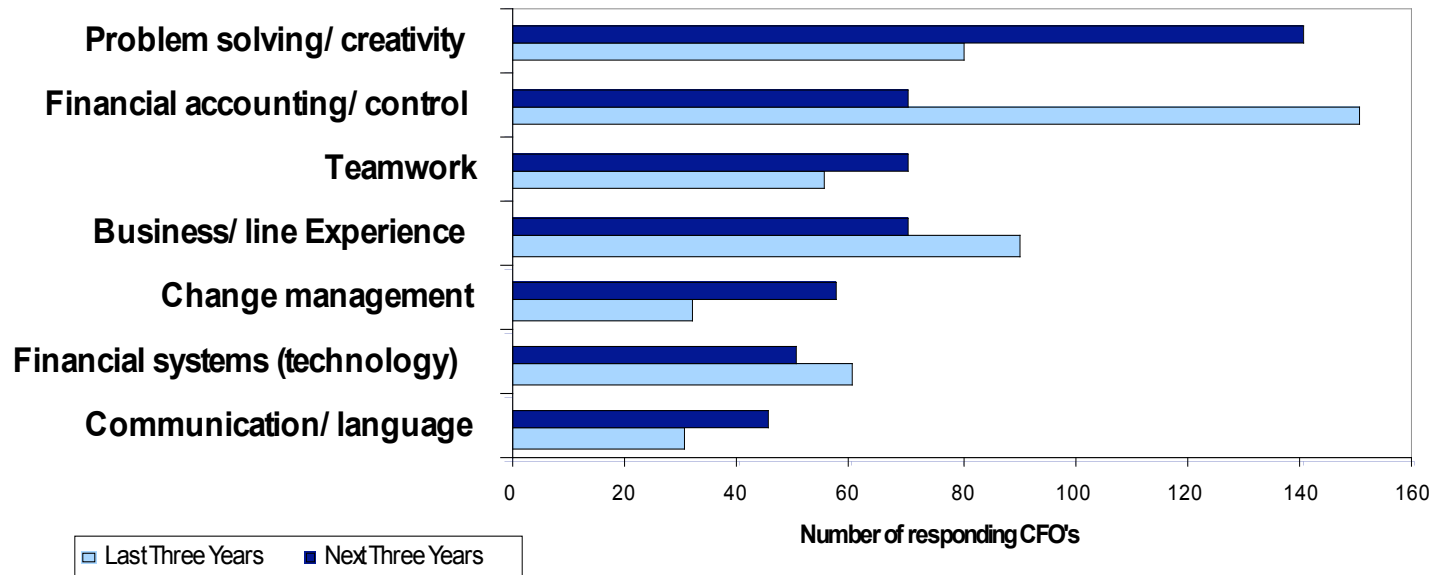
## Do's and Don'ts

- Be business partners but also act as an independent business partner. Jointly act as the conscience of the organization.
- Dialogue and brainstorm in areas of overlap eg Tax, M& A activities, corporate governance
- To grow, requires a risk taking and entrepreneurial approach
  - “but let them be calculated risks!”

Long term business partnerships require  
tight cross functional cooperation

# Looking to the future

**What skills are most valuable in developing the role of the finance function?**



**For Finance, problem solving and application of professional skills become even more key in the future. Similar trend for Legal function?**

**THANK YOU**



## **701 The CFO & the Legal Department: Speaking Each Other's Language**

**Sally J. March**  
**Nortel**

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## 701 The CFO & the Legal Department: Speaking Each Other's Language

- 
- What is the relationship between the General Counsel and the CFO?
- Has it changed in light of Sarbanes Oxley? Globalization? Other regulatory and business imperatives?
- How does Legal communicate with Finance in day-to-day transactions?
- How does the General Counsel communicate the value added by Legal at budget time?

## 701 The CFO & the Legal Department: Speaking Each Other's Language

- Both of us wear many hats
  - Corporate officer
  - Compliance
  - Business advisor
  - Subject matter expert
  - Counselor
  
- Why do we sometimes feel we are speaking different languages?
- Lawyers must learn Accounting as a Second Language both to facilitate the work we do together for the business and to market ourselves better to the ones who control the purse strings.

## 701 The CFO & the Legal Department: Speaking Each Other's Language

- Demonstrating Value
  - Who is the audience?
  - How do our finance colleagues perceive the legal function?
  - How do we measure intangible benefits?
  - Learning the language of finance

## 701 The CFO & the Legal Department: Speaking Each Other's Language

Understanding different perceptions of value

- What is valuable to the company?
  - Assets
  - Revenue
  - Profit
  - Cash flow
  - Shareholders return
- What does management measure?
  - Internal Rate of Return (IRR)
  - Net Present Value (NPV)
  - Return on Investment (ROI)
- What does Finance talk about?
  - Quarterly close
  - Analysts reports

## 701 The CFO & the Legal Department: Speaking Each Other's Language

### Measuring Value in Legal

- Establish a baseline. What's important to your company?
  - Inputs
    - Number of lawyers and cost of service
    - Internal billings
    - Outside counsel costs
  - Measurements
    - Matters per lawyer
    - Value of deals
    - Results of litigation, settlements
  - Client satisfaction/ Employee satisfaction
- Benchmark. What is important to other companies in your industry?

## 701 The CFO & the Legal Department: Speaking Each Other's Language

- Defining success
  - Increase in responsiveness, quality of service
  - Decrease in cost of services delivered
  - Increase in asset value or shareholder value
  - Effectiveness of preventative measures
    - Reduction in litigation, cost of claims
    - Improved cash flow

**If Legal can't provide the numbers, Finance will!**

## **701 The CFO & the Legal Department: Speaking Each Other's Language**

- Intangible benefits are difficult to predict and measure.
  - Risk management
  - Strategic
  - Intellectual Property – capturing know-how and intellectual capital
  - Competitive – bringing products/services to market faster, cheaper and better
  - Culture – reinforcing a corporate culture, preserving institutional memory
- If you can't quantify the benefit, ask Finance to help.

## **701 The CFO & the Legal Department: Speaking Each Other's Language**

### Tips

- Understand the business metrics that can be applied to the legal function.
- Involve Finance.
- If discrete initiatives or functions are easier to analyze, focus on those.
- Intangible benefits count, but recognize that Finance will discount them. Separate tangible and intangible benefits in your analysis.
- Benchmark.
- Market!



## 701 The CFO & the Legal Department: Speaking Each Other's Language

### Recognize & Advertise the Benefits of the Lawyers

- Goalposts of business are changing and success involves more than numbers, e.g.,
  - Brand value and reputation
  - Environmental credentials
  - Corporate Social Responsibility
  - Integrity

Lawyers' training prepares us for uncertainty.

We deal in law and equity.

## **701 The CFO & the Legal Department: Speaking Each Other's Language**

### Accounting as a Second Language

- Clients don't speak legalese so we must speak the language of business
- Learn the key accounting standards that apply to your business, e.g., revenue recognition, treatment of contingencies relating to litigation and defining materiality, etc.
- Conduct workshops on these key issues where Finance & Legal work together to create guidelines
- Put your legal advice into the language of your client
- Offer a clear path forward, even if it looks muddy to you.