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ORIGINAL→ESSENTIAL→UNBIASED→INFORMATION

Finance & Legal Issues: Beware the Pitfalls!

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Our Agenda:

- Introductions
- Contracts
- Agreements we'll consider
- FlyBy on FCPA, SOX & OFAC
- We welcome, and please participate after each segment
- Thanks to our Legal-Beagle: Joe Mancano

SJI Highlights

- **62 consecutive years of paying dividends**
- **Consistent dividend increases since 2000**
- **10-year growth in Market Cap**
  - ✓ ***$400M*** *at 12/31/2002 to* ***$1.6B*** *at 12/31/2012*
- **10-year Total Shareholder Return Compounded Annual Growth rate of 15.4% through 12/31/2012**
- **Net debtors due to heavy CAPEX**
- **8 person treasury team / IR included**

1 - SJI adopted the non-GAAP measure Economic Earnings in 2005; prior to that net income was utilized

SJI Highlights

- **Solid financial ratings**

	Moody's	Standard & Poor's
SJI	N/A	BBB+/Stable Outlook
SJG	A3/Stable Outlook	BBB+/Stable Outlook
	P-2 Short-Term	A-2 Short-Term

- **Strong liquidity**
  - Amended & extended SJI revolver
    - ✓ **Increased to $400M and maturity extension to 2018**
  - SJG revolver extended to 2018 in Q3, 2013

SJI Goals

Average annual economic earnings per share growth of at least 6-7%

Average annual dividend growth of at least 6-7%

(target 50-60% payout ratio)

Execute from low-to-moderate risk platform

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Finance & Accounting	Remittance Processing	Document & Content Management	Administrative Services	Industries
Accounts Payable Accounts Receivable AP Automation Invoice Processing	Retail Remittance Wholesale Remittance Medical Lockbox International Payments	Inbound Mail Processing Government Forms Processing Claims Processing Medical Records Image Capture & Archive EOB Processing Back File Conversions Content Digitization	Mortgage & Loan Origination Credit card Origination Servicing	Banking Healthcare Pharma Government Utilities Travel Professional Services

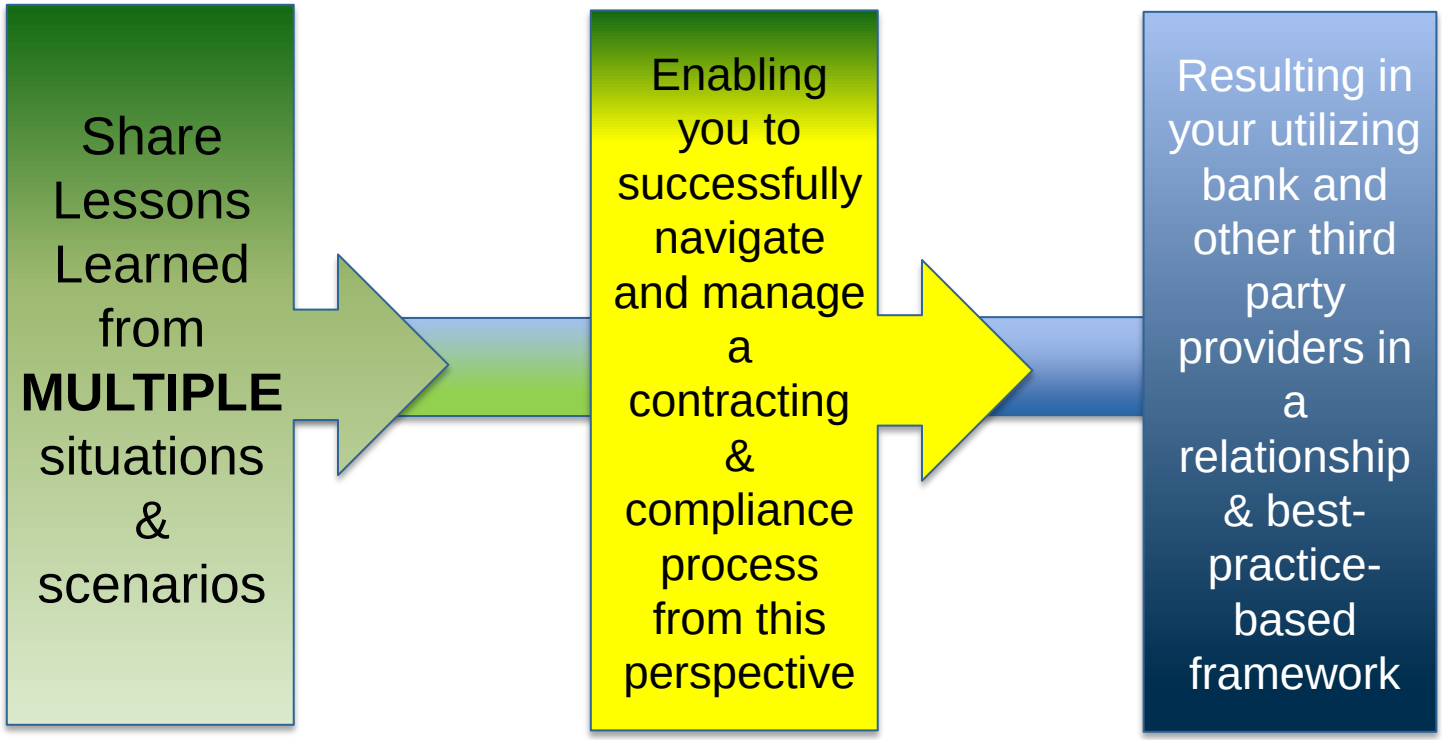
Optimize your back office work stream through process improvement, technology and disciplined management

A Perspective & The Disclaimers…..

Beware “powdering your own wig”….

August of 1809. The Philadelphia *Port Folio*. The phrase was written as: "He who is always his own counselor will often have a fool for a client."

So, our End-In-Mind…..



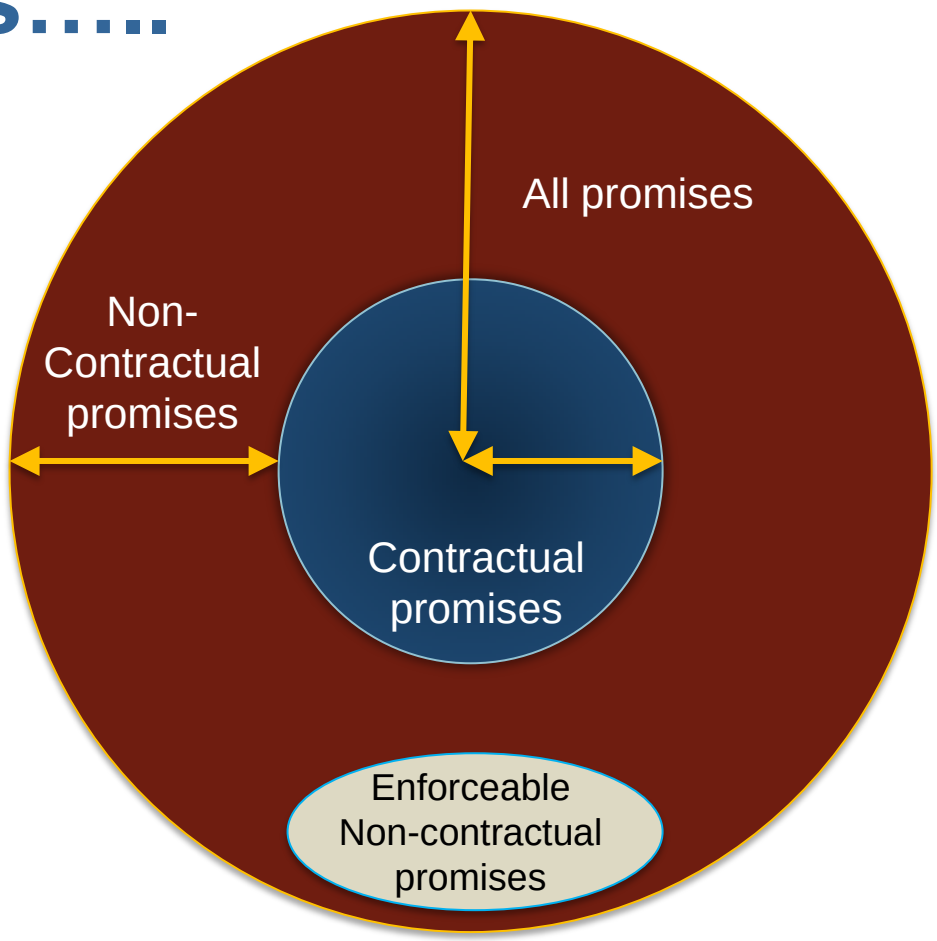
Agreements we'll consider today:

- **Loan Agreements**
- **"Operating" Agreements**
  - Wire Transfer
  - ACH
- **Business Process Outsourcing**
  - Services
  - Agency Relationships
  - MSAs & SOWs
- **FlyBy on SOX & FCPA**

What is a Contract?

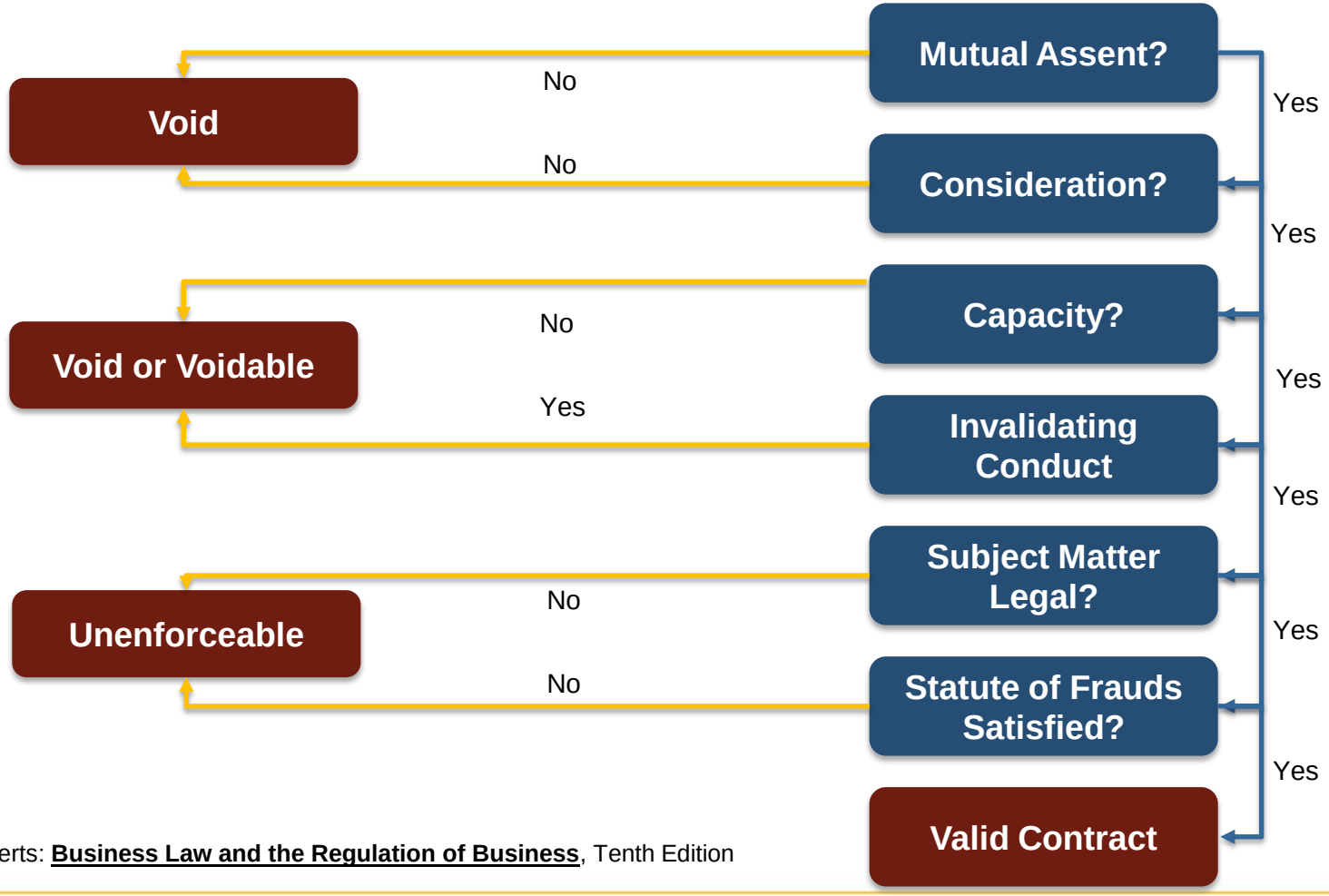
- **Simply: A BINDING agreement that the courts will enforce**
- **CAN be actions and/or a promise**
- **A *promise* manifests or demonstrates the intention to act in a specified manner**
- **ALL contracts are promises but….**
  NOT ALL promises are contracts!

Dealing with "promises" and contracts…..



Source: Mann & Roberts: **Business Law and the Regulation of Business**, Tenth Edition

Distinctions about voiding, voidable or enforceable contracts:



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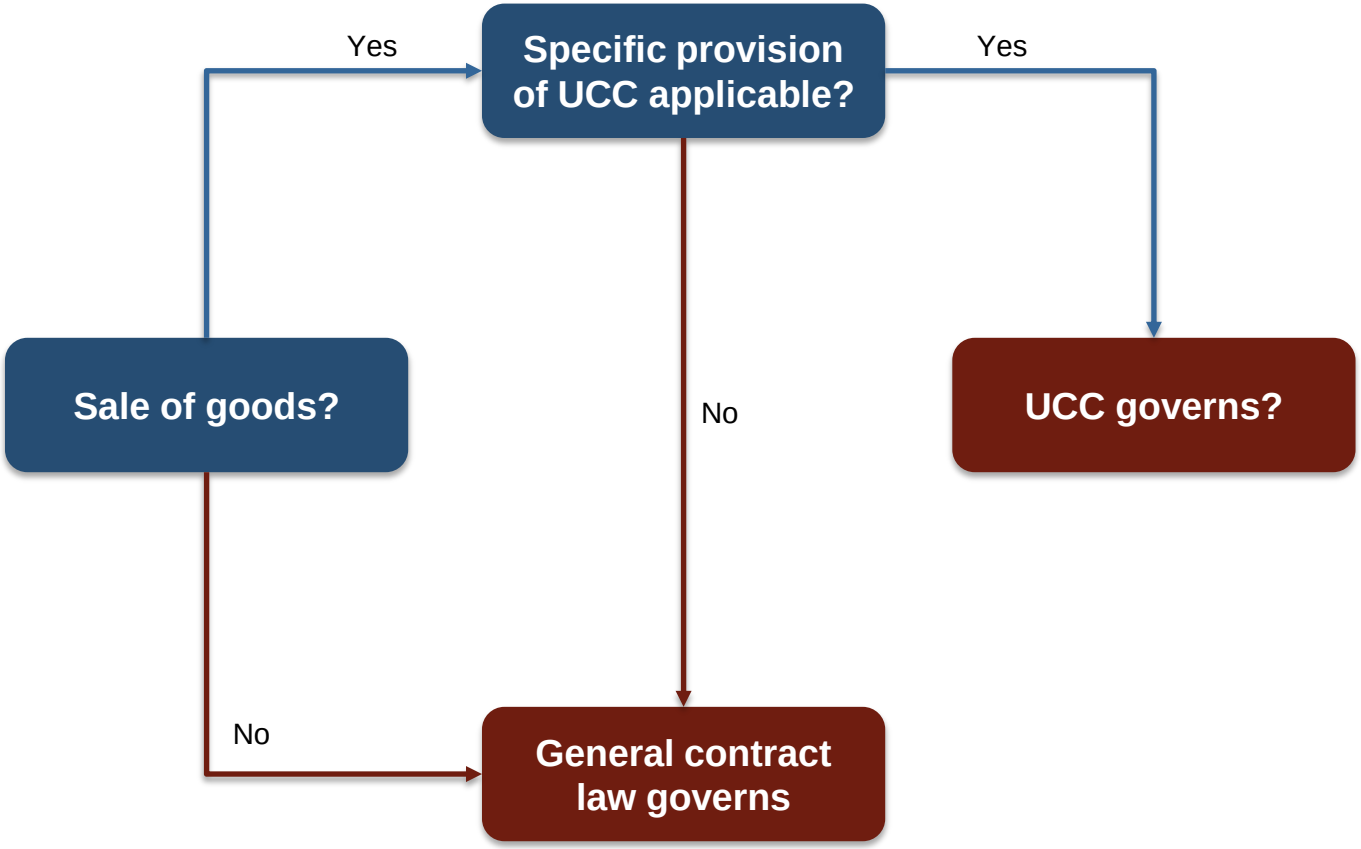
Where's the UCC fit in?



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Basic Bank Loan Agreement: Preliminaries

- **Term Sheet**
- **Sets forth key terms of the loan/credit facility**
  - **Interest Rate**
  - **Repayment Period**
- **Typically states that it is not a binding obligation**
- **Best time to negotiate/clarify terms**

Agreement Alternatives

- **Promissory Note**
  - **Only borrower signs – lender is not a party**
  - **Promise to pay a fixed amount on demand or at definite times**
  - **Lender can freely transfer ownership**

- **Overdraft Facilities**
  - **Lender provides borrower a line of credit**
  - **Used for short-term borrowing**
  - **Simple and flexible way to borrow**
  - **Lender has right to demand repayment at any time and to refuse to renew**

Negotiation Issues

1. **Local or Foreign Currency**
2. **Secured v. Unsecured**
   - **Collateral Security**
   - **Letter of Credit**
   - **Third-Party Guarantee**
3. **Single v. Installment Disbursements**
4. **Term v. Demand Loan**
   - **Beware of cross-default clause**
5. **Revolving Credit**
6. **Principal Repayment**
   - Lump Sum v. Installment
7. **Interest Rate**
   - Fixed v. Floating

Basic Provisions

1. **Definitions**
   - Make sure you understand them
2. **Loan Commitment**
   - **Conditions Precedent**
3. **Disbursement**
4. **Repayment of Principal**
   - Early Repayment
5. **Interest Rate**
6. **Interest on Overdue Payments**
7. **Fees**
8. **Reimbursement of Lender Expenses**
9. **Representations and Warranties**
   - No defaults
   - No pending or threatened litigation
   - No material adverse change
   - Financial statements accurate
   - No liens

Basic Provisions

10. **Covenants**
    - **Affirmative**
      - **Deliver financial statements regularly**
      - **Pay taxes**
      - **Notice of liens**
    - **Negative**
      - **No additional indebtedness**
      - **No pledge of assets**
      - **No asset disposal**
11. **Events of Default**
    - Payment default
    - Breach of other covenants
    - Breach of representation or warranty
    - Cross-Default
    - Bankruptcy
    - Change of control
    - Failure to furnish financial statements
    - Depreciation of collateral
    - Material change in financial condition

Basic Provisions

12.Remedies

What are remedies following a default?

- **Loan Acceleration**
- **Confession of Judgment**
- **Attorneys fees**

Sample: Loan Agreement: Article V – Affirmative Covenants

- **The borrower covenants and agrees from and after the date of the Agreement and so long as the Loan remains unpaid or outstanding, the Borrower will do the following:**

- **5.01. Construction of the Project.**
  Within sixty (60) days after the date of this Agreement, the Borrower shall commence the construction of the Improvements. The Borrower shall prosecute the construction of the Project with diligence and continuity to completion, and shall cause the same to be completed in a good and workmanlike manner in accordance with the Plans and in compliance with all applicable Laws, all applicable permits, licenses and approvals and all applicable private covenants on or before the Maturity Date, free and clear of all liens or claims of liens for Materials supplied or work performed in connection therewith. Upon demand of the Lender, the Borrower shall correct any defect in the Improvements or any departure from the Plans.

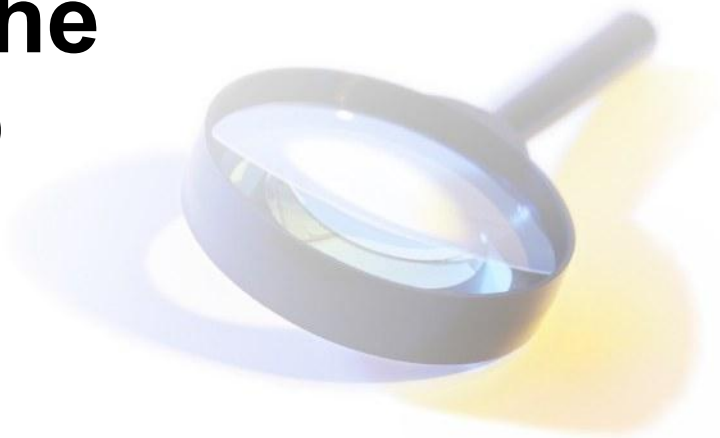
Sample Loan Agreement: Article VII - Defaults

- **7.01. Events of Default.**
- **An Event of Default shall mean the occurrence or existence of one or more of the following events or conditions (whatever the reason for such Event of Default and whether voluntary, involuntary or effected by operation of law):**

  - **(d) The Borrower shall default in the performance or observance of any other covenant, agreement or duty under this Agreement or any other Loan Document and such default shall have continued for a period of thirty (30) days after written notice thereof to the Borrower or such longer reasonable period as the Lender agrees is necessary to cure, provided Borrower has commenced and is diligently pursuing such cure**

Practical Experience:

- Don’t rely exclusively on the lawyers
- Understand the business issues as well as the legal issues
- Imperative to “think outside the box” and consider the worst case scenario



Operating Agreements

- **Actually a misnomer, as generally "Operating Agreements" spell out issues in limited liability corporations**
- **Agreements for wire services, ACH services, deposit and other services are Agreements (Contracts) in their own right**

Wire Transfer Agreements: General Framework

- First & Foremost…UCC4A
- Forms & Formats
- Authority/ies
- Security Procedures
- Verification of Wire Transfer Requests
- Adequacy of Security

Wire Transfer Agreements: General Framework (continued)

- **Specific Procedure**
- **Recording of Telephonic Conversations**
- **Time/Timing/Funds Availability**
- **Handling of:**
  - Requests
  - Amendments
  - Revocations
  - Discrepancies

Wire Transfer Agreements: General Framework (continued)

- Recurring Wires
- Currency Conversions
- Duties of Customer
- Release & Indemnification of Bank
- Limitation of Liability
- Fees & Charges

Wire Transfer Agreements: General Framework (continued)

- Force Majeure
- Termination
- Compliance with Laws
- Governing Law
- Successors & Assigns
- Severability
- Amendments & Modifications
- Notices

ACH Agreements: General Framework

- **ACH Rules (NACHA Rule Book incorporated, by reference? Yes!)**
- **Types of entries, e.g., SEC codes**
  - ARC, BOC, CCD, CTX, POP, PPD, RCK, TEL, WEB, IAT
- **OFAC Acknowledgement**
- **Underwriting**
- **Authorizations & Auth Methods**
- **NOCs & Pre-Notes**
- **Transmissions and Data Security**
- **ODFI/Bank Good Faith**
- **Warranties & Representations**
- **Data Retention**

ACH Agreements: General Framework (continued)

- **Provisional Credit/s**
- **Form & Format**
  - Credits & Debits
  - Entry Settlement
- **Pre-Funding**
- **Settlement**
- **Settlement Discrepancies**
- **Cancellation or amendment of Entries**
- **Rejection of entries**
- **Returns**
- **Reversals**

ACH Agreements: General Framework (continued)

- **Inconsistencies, e.g., Name & Account Number**
- **Fees**
- **Liability**
- **Exposure Limits**
- **Security Interest**
- **Amendments to the Agreement**
- **Inspection**
- **Termination**
- **Miscellaneous**
  - Reference to Appendices, e.g., Glossary
  - Assignment
  - Enforcement waiver
  - Venue

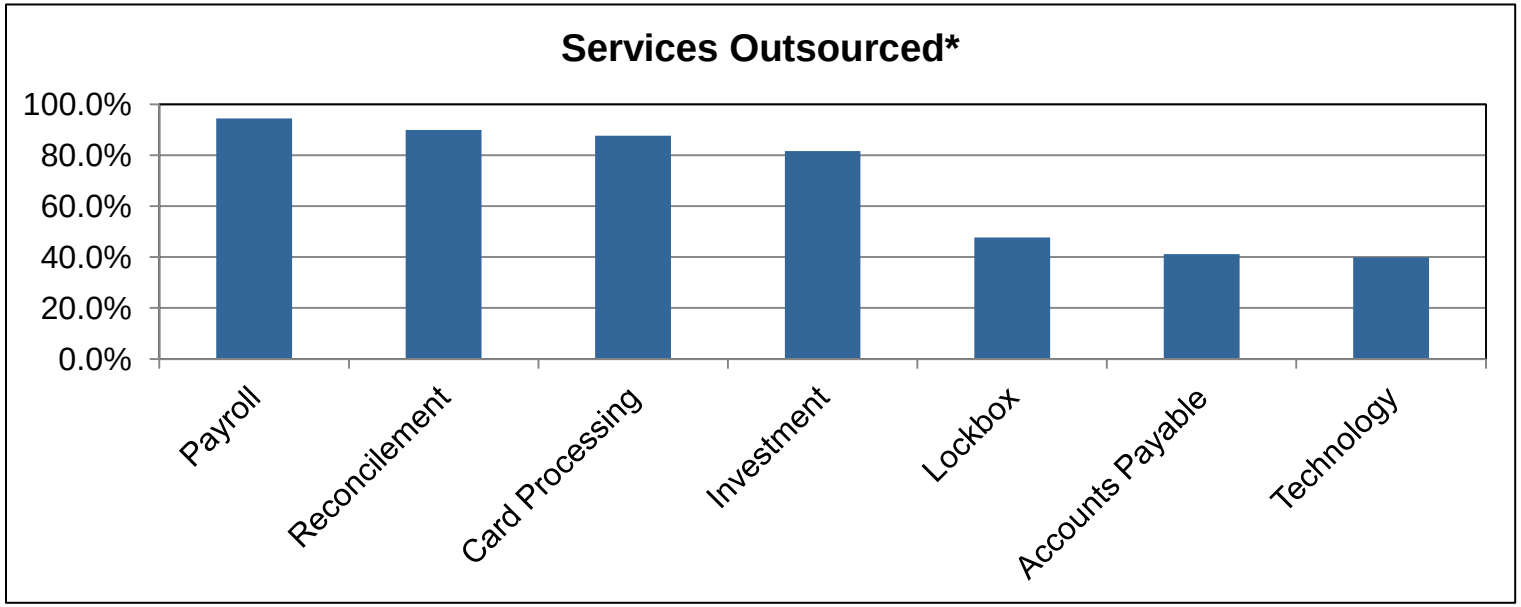
Practical Experience:

- Important to make sure any third-party vendors understand the rules
- Consider refreshing your wire & ACH agreements periodically

- Recognize that the Banks will never agree to modify certain provisions

BPO Agreements

- **BPO = Business Process Outsourcing**
- **Term, and industry itself, can mean MANY things**
- **Top "outsourced" services that treasury and finance professionals touch:**



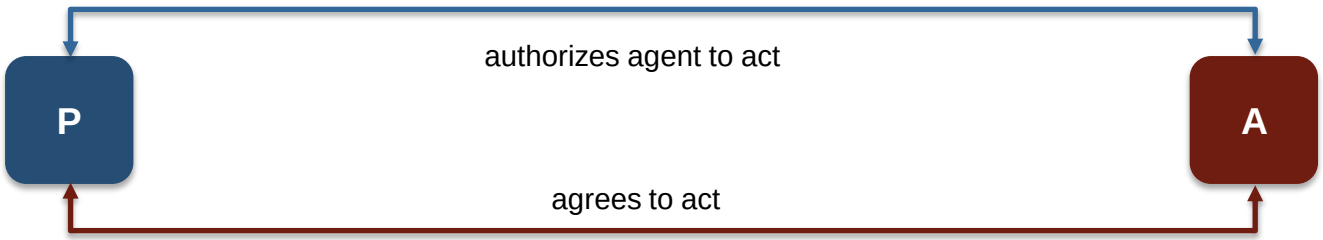
Source: ePayMetrics.com

Concept of Agency

- In addition to a contract, consider "Agency" and its implications in BPO Agreements
- Core Concept is: "Duty to the Account"

Duties of Principal & Agent

Duties of P to A
Compensation
Reimbursement
Indemnification



Duties of A to P
Obedience
Diligence
Loyalty

Source: Mann & Roberts: **Business Law and the Regulation of Business**, Tenth Edition

BPO Relationships Generally….

- **Ask for a MSA – Master Service Agreement**
- **Ask/s for SOWs – Statements of Work, "under" the MSA**
- **The Difference?**
  - General Relationship: MSA
  - Specifics & Pricing: SOWs

General MSA Format

- Introduction
- General Services Descriptions
- Governance
- Change Orders
- Responsibilities of Both Parties
- Warranties
- GENERAL Fees & Payment Terms
- Taxes

General MSA Format (continued)

- **Confidentiality / IP Rights**
- **Compliance & Audit Rights**
- **Indemnification & Limits on Liability**
- **Term & Termination**
- **General Provisions**
  - Insurance
  - Agency
  - Non-Solicitation
  - Assignment
  - Notices

General SOW Format

- General Descriptions
- Scope
- Servicer Obligations
- Client Obligations
- Service Description/s & Specific Fees
- SLA/s

Practical Experience:

- **Seek input from various functional areas outside the one contracting for service**
- **Thoroughly vet the business process description (SOW) and ensure flexibility for growth/contraction**
- **Ensure the “pain points” are measurable**

FCPA & SOX & OFAC FlyBy….

FCPA Corporate Liability

- Felony conviction
- Fines of up to $2,000,000 per violation
  - Alternative Fines Act: Up to twice the benefit
- Disgorgement
- Denial of export licenses
- Debarment
- Compliance monitor
- Defense costs
- Other suits: Wire fraud, tax fraud, RICO, shareholder
- Don't forget INDIVIDUAL Liability!!!!

SOX Corporate Liability

- Best Practices Abound, USE THEM!
- Felony conviction
- Beware the Whistle Blower Provisions
- Don't forget INDIVIDUAL Liability!!!!!

OFAC Liability

- You cannot transfer a shred of liability, nor share it, nor outsource it!
- It's FinCEN you need to KNOW!
- FinCEN openly has discussed a desire to make a corporate case stand up as an example…"exceptive relief" is to be RARE - not the norm!
- Don't forget INDIVIDUAL Liability!!!!!

Working WITH Legal: Practical Advice

- **Optimal scenario – counsel is intimately familiar with bank agreements, borrowing practices and treasury procedures**
- **Spell out the business deal**
- **It is up to you to understand the impacts to the business as well as communicate those impacts to the line leaders – Treasury should not operate in a vacuum**

Summary:

- **The finance & treasury professional needs to OWN the overall process**
- **Don't get intimidated by the "legalese"**
- **Educate your legal partner about the underlying business**
- **Ensure that once you've negotiated the documents, make sure the compliance activities are kept fresh**
- **Contracts & agreements structure the *relationship* among the parties, so put the effort & time in to craft the relationship right, the first time!**

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