

Contract Management and Corporate Governance in Practice - Lessons Learned

Securing Outsourcing Success through Proactive Law & Contract Management

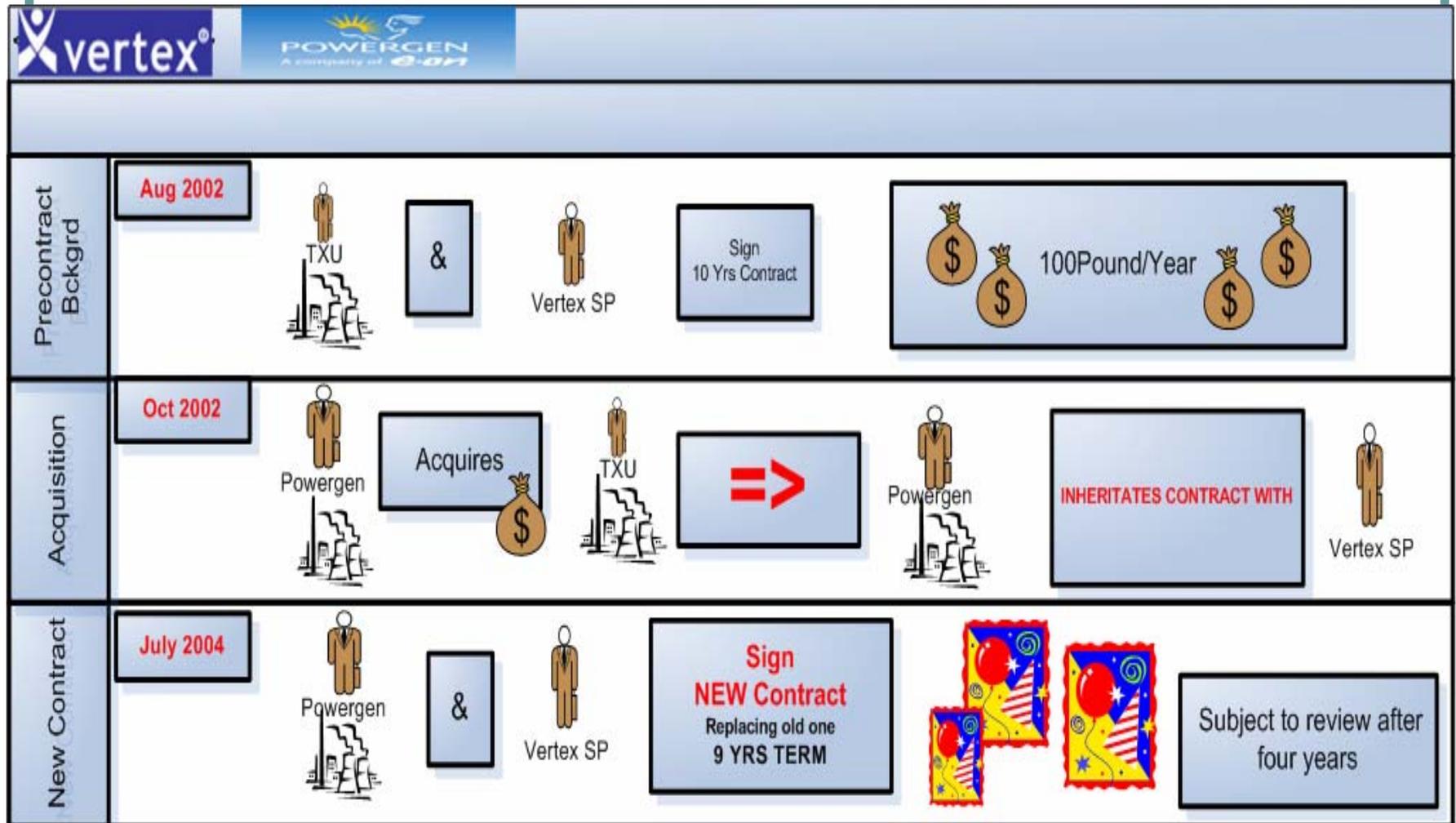
Turku June 15th 2007

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Agenda

- No one ever sues on an outsourcing contract
- Case Study versus current Experience
- Outsourcing Contract Failures and Avoidance
- Service Provider and Customer Process Flow
- Proactive Law in Proposal and Contract Development Process – (SP Perspective)
- Step Approach – Micro Vision
- Claim vs Proactive Law Process
- Q&A

No one ever sues on an outsourcing contract

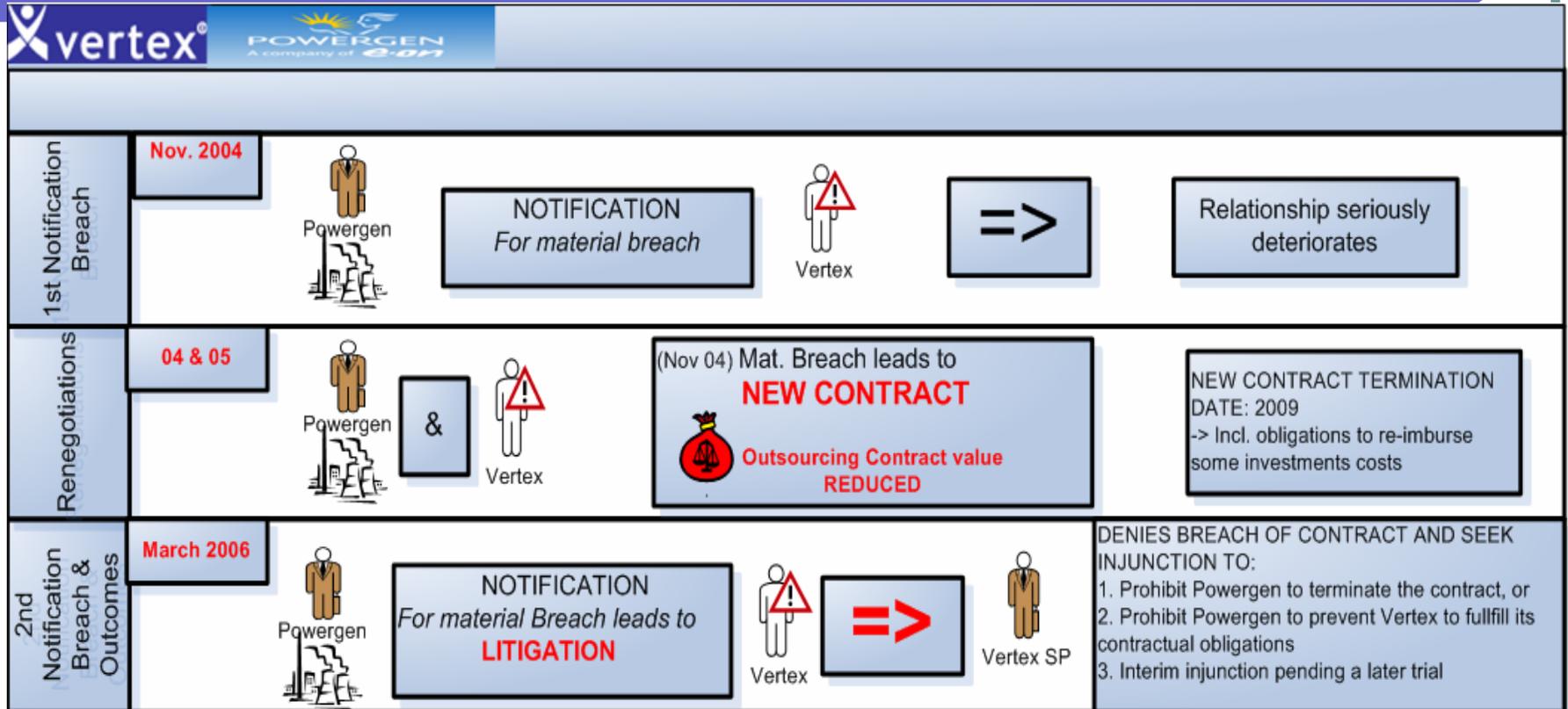


No one ever sues on an outsourcing contract – Press Release

Vertex CEO- John Roberts : "I am delighted that Vertex has signed this contract. This consolidates the relationship that was first established when Powergen acquired TXU Europe's retail business in October last year. We look forward to developing our working relationship with Powergen."

Powergen UK CEO, Paul Golby, added: "Powergen is committed to providing excellent customer service while staying focused on controlling its costs. With the transition from TXU to Powergen, Vertex has professionally handled what has been a challenging time, and this more focused contract realizes better value for Powergen. I am confident we will continue to set an example to the industry with the service Powergen provides."

No one ever sues on an outsourcing contract



Material Breach of Contract :

1. Vertex fails to collect debts from "staywarm" customers (11 million GBP)
-> leads Powergen to lose Customers
2. No breach of SLAs which do not include measurable performance
3. India back office monitoring caused Data protection issues
4. Vertex has no access to management information necessary to collect debts

No one ever sues on an outsourcing contract



Court Decision	Outsourcing contract 	Requires continuing cooperation and performing relationship. 1. This relationship is SO DAMAGE THAT granting of injunction is inappropriate 2. The court will not order someone to comply with their contractual obligations
General Conclusions		1. A short Contract (173p) PERCEIVED as "complex and large" 2. TABOO of SP SUING a Cust to insist for a contract to remain in force is gone 3. "Nobody would sue an Outsourcing contract" ILLUSION - has been debunked. 4. More cases of this sort to be expected in the future
Open Questions		1. Will court reach same conclusion if Cust. requires SP to continue service delivery, => Court usually reluctant to act as a referee or monitor daily contract issues? => Will injunction then be allocated? 2. Will large projects be more subject to law suits in general? 3. Is the pandora box open to more litigations of this kind? => considerable financial and operational Consequences for both parties

Case Study versus Experience

● **Almost no disputes end up in courts**

- Legal procedures too painful - Parties too interdependent
 - Preference for arbitration, re-negotiation, Re-tendering and exit & termination provisions
- Rare to get an injunction ordering the other party to perform its contractual obligations, due to
 - Outsourcing contracts complexity requiring heavy investigation and specific expertise
- Implies decision for criminal sanctions
- Courts will be expected be "Referees" of daily business issues and responsible for contract monitoring.

● **Alternatives to Termination and potential disputes**

- Contracts are investigated by customer
- Audits on services/performances as instrument of contract-renegotiations and price readjustments
- Partial contract clauses reviewed or overall contract revision (Telco world)
- Contracts subject to arbitration, damages and liabilities being enforced (Private sector)

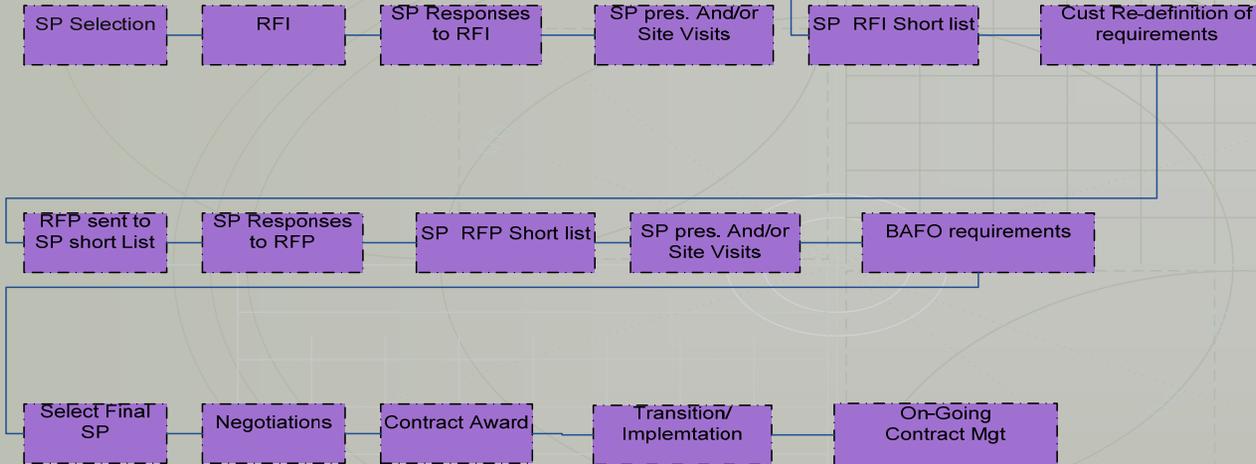
Outsourcing Contract failures and Avoidance

- Causes of Contract Failures in outsourcing
 - Changes in Business requirements & shift of investment to other priorities
 - Contractual Conflicts: Inflexible and unsatisfactory contracts
 - Costs, performance, human resources issues
 - higher costs than expected and/or performances above or below expectations
 - staff retention or redundancy, mgt turnover
 - Project Management and operational failures
 - Poorly managed projects
 - Lack of Risk Mgt
 - Relationship failure
 - Customer abdicates responsibility for the relationship and results
- Process of avoidance of Contract Failures
 - Apply Proactive legal expertise
 - Apply Contract management processes
 - Application of Proactive Law expertise through overall project life cycle

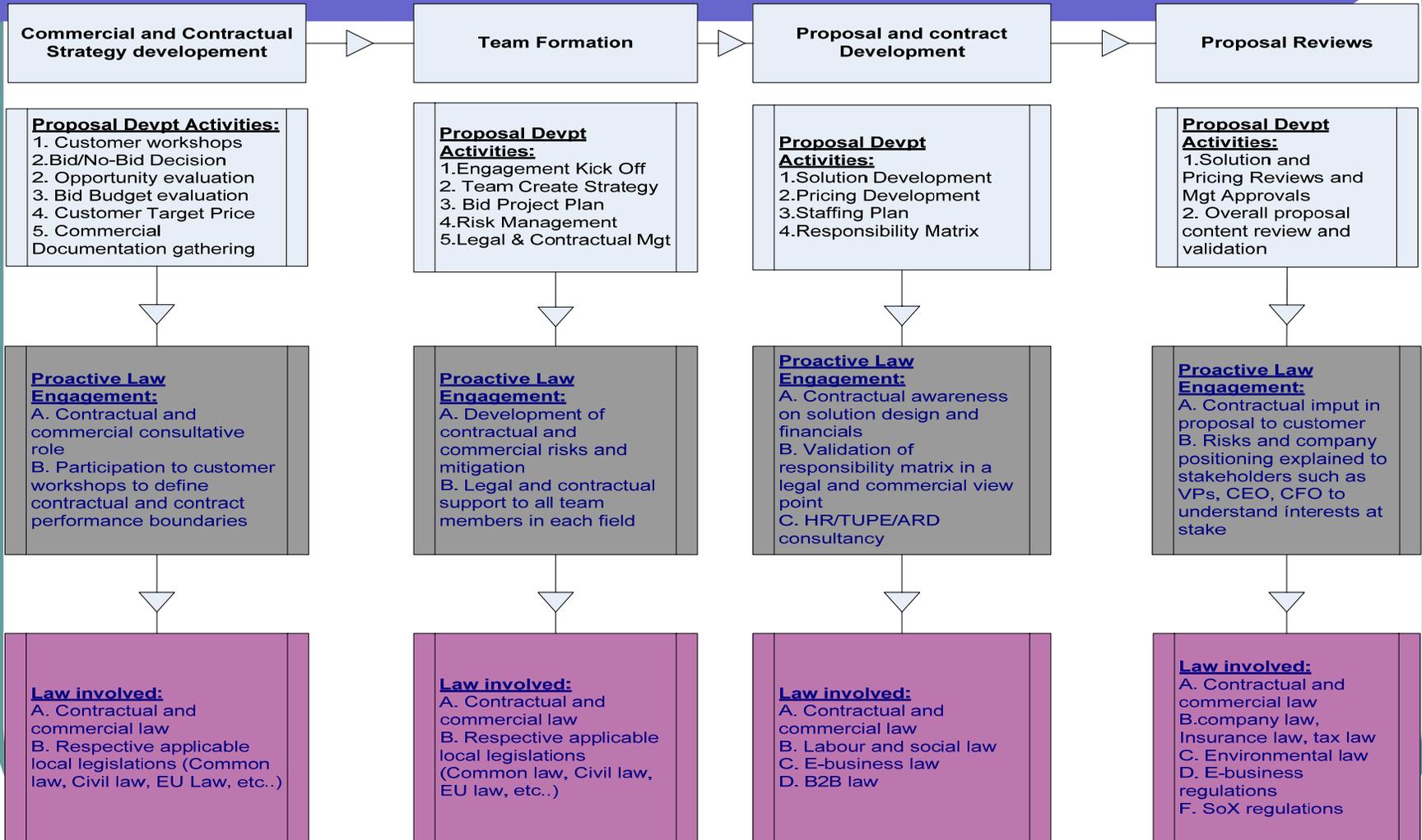
Service Provider and Customer Process Flow

Outsourcing Common Customer & Service Provider Process Development

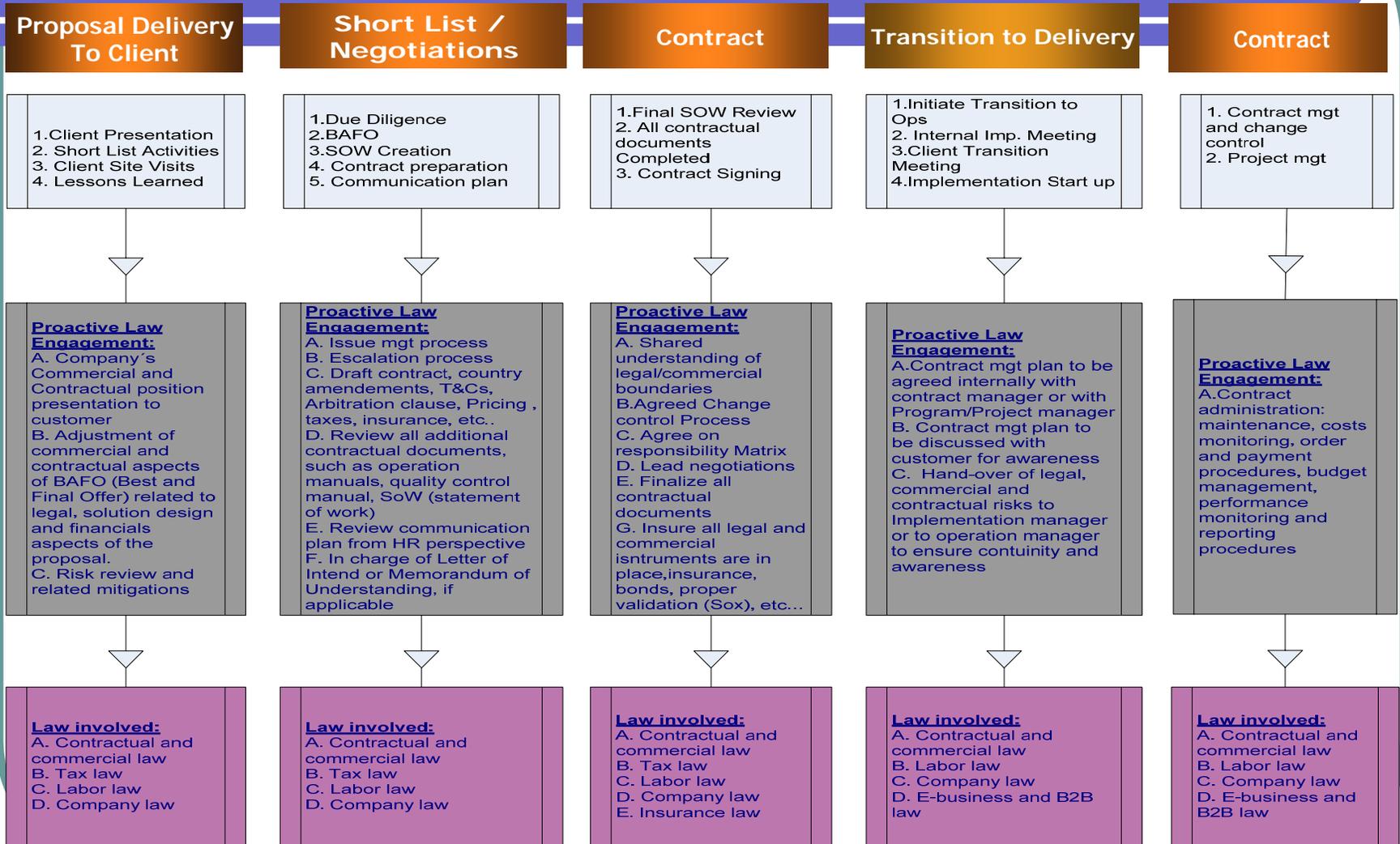
Outsourcing Project Governance



Pro-active Law in Proposal and Contract development Process – 1/2 (SP)



Pro-active Law in Proposal and Contract development Process – 2/2 (SP)



Step Approach – Micro Vision

<i>Phase</i>	Short list / Negotiations
<i>Milestones</i>	<ol style="list-style-type: none">1. Due Diligence2. BAFO3. SOW Creation4. Contract preparation5. Communication plan
<i>Proactive Law Fields of Engagement</i>	<ol style="list-style-type: none">A. Issue mgt processB. Escalation processC. Draft contract, country amendements, T&Cs, Arbitration clause, Pricing , taxes, insurance, etc..D. Review all additional contractual documents, such as operation manuals, quality control manual, SoW (statement of work)E. Review communication plan from HR perspectiveF. In charge of Letter of Intend or Memorandum of Understanding, if applicable
<i>Proactive Law Specialized Fields of Law</i>	<ol style="list-style-type: none">A. Contractual and commercial lawB. Tax lawC. Labor lawD. Company lawE. Insurance law

Claim vs Proactive Law Process : Few Questions

- Would have proactive law prevented relationship between Powergen and Vertex to deteriorate and prevent the material breach? Yes, if;
 - Due Diligence
 - Dynamic Change Control
 - Project governance including escalation
 - SLAs and right level of performance established at contract signature
 - Active Communication Plan following legal and operational milestones
 - Ressources allocation incl. legal and commercial profiles enabled and empowered to remove road blocks
 - Raise attention from VPs and upper management along project development
- **Conclusions:**
 - Proactive Law is not the miracle remedy but support organisations at identifying, facing and solving issues and future drawbacks
 - Proactive Law allows Predictability and Business-legal security

Questions?

Introduction – Cecilia

- Intend to present proactive law as a dynamic and evolving component of business life.
- To free law of its traditional picture as a static, unsystematic and reactive stand alone remedy to business issues.
- To explain how proactive law “process” can be applied to projects
 - Application of proactive law at “incubation” phase
 - Application of proactive law at “development” phase
 - Application of proactive law to “on-going” activities
- Demonstrate through a business case viability of Proactive law

Claim vs Proactive Law Process : Few Questions

- Would have proactive law prevented relationship between Powergen and Vertex to deteriorate and prevent the material breach?
 - More than likely if following steps/processes would have been followed;
 - Careful Due Diligence of customer core business areas
 - Dynamic change control management system,
 - Proper project governance including escalation and communication process
 - Set up of proper SLAs and right level of performance during contract development
 - Proactive approach incl. communication plan following legal and operational milestones
 - Resources allocation incl. legal and commercial profiles enabled and empowered to remove road blocks (India back office issues and access to management info to allow proper treatment of debts)
 - Raise enough attention from VPs and upper management along project development
- Conclusions:
 - Proactive Law is not the miracle remedy but support organisations at identifying, facing and solving potential issues and future drawbacks
 - Proactive Law allows Predictability and Business-legal security