MANAGING THE RISK OF FRAUD

Produced by the Litigation and Dispute Resolution Division of Levi & Sinclair, LLP, Chartered Accountants
4141 Sherbrooke Street West, Suite 240, Westmount, Quebec H3Z 1B8 Tel: (514) 931-7600 Fax: (514) 931-3600

SOLUTIONS FOR SARBANES OXLEY

About 404

On 30 July 2002, the United States signed into law, the Sarbanes-Oxley Act. The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud. It has effectively re-written the rules for corporate governance, disclosure and reporting.

The Sarbanes Oxley Act 2002 was brought about by the need to restore investor confidence in financial statements and the markets generally. This Act affects public companies worldwide that are known as "Issuers", reflecting the fact that they issue securities on the stock exchanges and are regulated by the SEC.

Section 404 of this act is entitled "Management Assessment of Internal Controls" and says that "each annual report shall contain an internal control report, which shall

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

One Hundred Seventh Congress
of the
United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the twenty-third day of January, two thousand and two

An Act

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

Based on Best Practices

The cumulative impact of the Enron, WorldCom and other corporate collapses has eroded market confidence and caused the authorities to take a new look at how to recognize and manage risk within the corporate environment. Recent legislative and regulatory changes, including Sarbanes Oxley, are likewise causing a major rethink on best practices to be applied within the corporate arena.

Organizations may not attempt to avoid these requirements by reincorporating their activities or transferring their activities outside of the United States.

The overall aim of course, is to restore public confidence after the Enron and Worldcom scandals.

Legal and Regulatory Framework

A governance system is based on a legal and regulatory framework creating a stable and reliable basis for fair business dealing based upon best practices. The legal and regulatory framework varies from country to country and will therefore create divergences in terms of best practices to be applied to corporations and their dealings with each other, their investors and the public.

Filing Extension

The SEC has extended by two years the original date for compliance with the requirements of Sarbanes-Oxley Section 404 for foreign private issuers and companies not subject to the accelerated filing rules.

Most public reporting companies are required to comply with the internal control evaluation report requirements of Section 404 of the Sarbanes-Oxley Act with their annual reports filed for years ending on or after November 15, 2005.

When the SEC adopted rules implementing Section 404, it provided an extended compliance date for foreign private issuers and companies not subject to the accelerated filing rules (i.e., companies public for less than one year, companies with a public float of less than $75 million, and small business filers). Previously, these companies would have been required to include internal control reports beginning with annual reports for years ending on or after July 15, 2005. Under the extension announced on March 2, 2005, these companies will not have to begin including internal control reports until annual reports filed for fiscal years ending on or after July 15, 2006.

Under the extension announced on August 9, 2006, non-accelerated filers will not have to begin including internal control reports until annual reports filed for fiscal years ending on or after July 15, 2007.

Why was 404 introduced?

The overall aim of course, is to restore public confidence after the Enron and Worldcom scandals.

The Sarbanes-Oxley Act has created new requirements for public companies within the United States of America and their global subsidiaries, which includes:

- To create tight internal controls over their financial reporting process and then to regularly assess their effectiveness.
- Management to certify that they are responsible for establishing and maintaining adequate internal control over financial reporting for the company.
- Management to assess the effectiveness of internal controls as of the company's most recent fiscal year.
- Management to identify the tools used to evaluate the effectives of internal controls of financial reporting.
- Management to make a statement that the company's independent auditors have issued an attestation report on managements assessment of the company's internal controls over financial reporting.

Traditionally, a great deal of this work would have been carried out by those company's audit firms. However, they are now unable to deal with compliance work relating to Section 404, neither can they prepare accounting schedules that are required during audit work, including such matters as cash reconciliation's into company account reconciliation's or depreciation schedules.

Compliance Requirements

PUBLIC COMPANY AUDIT COMMITTEES

All organizations governed by SEC regulations are required to establish and maintain an audit committee that shall be responsible for the appointment, compensation and oversight of any registered public accounting firm employed by that issuer.

The accounting firm shall report directly to the audit committee.

All audit committee members shall be members of the organizations board of directors but shall be otherwise independent. They may therefore not be an affiliated person of the organization or an associated company, nor may they accept consulting advisory or other compensatory fees other than in their capacity as audit committee members.

The audit committee shall establish procedures regarding the handling of complaints relating to accounting, controls, or auditing matters. They must also develop procedures for the confidential, anonymous submissions by the organizations employees concerning questionable accounting or auditing practices.

Audit committee shall be able to appoint advisors as considered necessary and to receive adequate funding for the organization for such purposes.

IMPROPER INFLUENCE ON CONDUCT OF AUDITS

No officer or director of an issuer may take any action to fraudulently influence, coerce, manipulate or mislead any accountant engaged in an audit of financial statements in order to mislead.

CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS

Periodic statutory financial reports are to include certifications that:

- The signing officers have reviewed the report.
- The report does not contain any material untrue statements or material omission or be considered misleading.
- The financial statements and related information fairly present the financial condition and the results in all material respects.
- The signing officers are responsible for internal controls and have evaluated these internal controls within the previous ninety days and have reported on their findings.
- A list of all deficiencies in the internal controls and information on any fraud that involves employees who are involved with internal activities.
- Any significant changes in internal controls or related factors that could have a negative impact on the internal controls.

Organizations may not attempt to avoid these requirements by reincorporating their activities or transferring their activities outside of the United States.

FORFEITURE OF CERTAIN BONUSES AND PROFITS

If, due to non-compliance with the Act, the issuer is required to restate the accounts, the CEO and the CFO shall reimburse the issuer with any bonus, incentive or equity based compensation received by them during a twelve month period plus repay any profits realized from the sale of securities of the issuer in that period.

How can LEVI & SINCLAIR help you?

THE POSITION REGARDING SUBSIDIARIES OF US PARENT COMPANIES

The Sarbanes-Oxley legislation and the auditing standards apply equally to subsidiaries of American companies situated in Canada and to Canadian companies governed by the SEC.

In the absence of local internal audit functions, the financial directors and CEO's of these companies are faced with having to comply with American legislation but are not able to call upon the services of their auditing firms.

LEVI & SINCLAIR has positioned itself to be able to offer Canada-wide service in assisting subsidiaries of the United States quoted companies and Canadian companies listed on US exchanges, to comply with Sarbanes-Oxley and specifically with Section 404. **LEVI & SINCLAIR** through its membership in Integra International, a network of independent accounting firms across the globe is able to offer professional services to companies unable to get these services from their auditor.

Litigation Support and Dispute Resolution Service Areas

- Civil and criminal Fraud Investigation
- Management and employee fraud and theft
- Identification of secret commissions and kickbacks
- Sarbanes-Oxley compliance audits
- Sarbanes-Oxley 404 audits
- Training on fraud awareness and prevention
- Due Diligence Audits
- Insurance claim assistance
- Retail sales audits
- Contract dispute resolution
- Professional negligence litigation support
- Fraud prevention program design, implementation and evaluation
- Bank due diligence audits
- Employee background audits
- Financial discrepancy analysis
- Divorce litigation support
- Insurance claim quantification
- Breach of contract quantification
- Electronic Discovery and Data Recovery
- Computer forensics