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What Private Companies Need to Know About the Sarbanes-Oxley Act

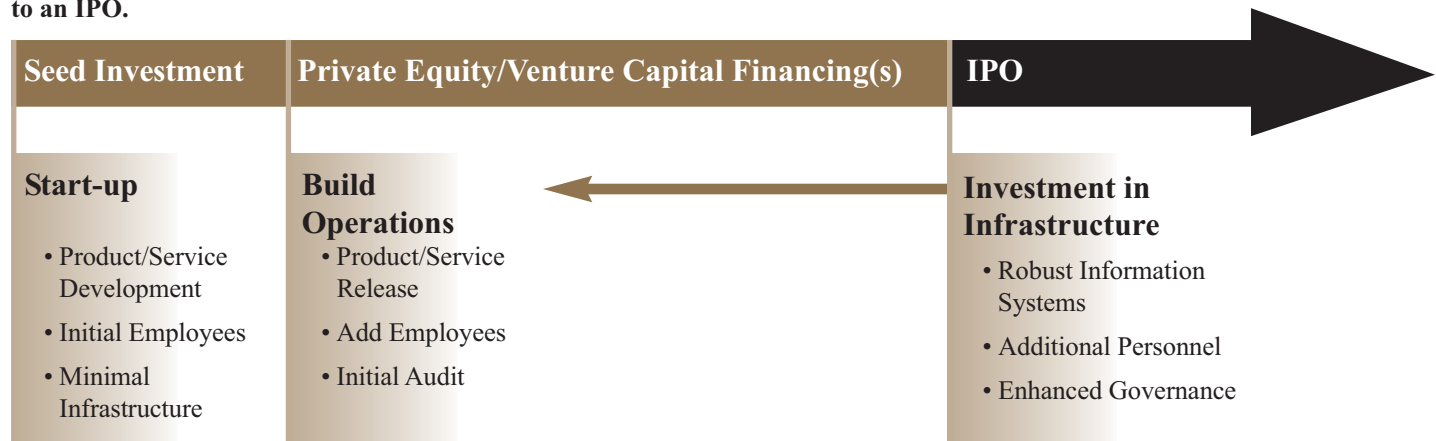
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hile the requirements of the Sarbanes-Oxley Act of 2002 are directed specifically toward publicly traded companies regulated by the Securities and Exchange Commission, the legislation's impact on private companies should also be considered. Study of the legislation reveals that it affects a wide range of private company activities, ranging from the establishment of internal controls, to the selection of directors, to the preparations for a strategic transaction. Managers and board members considering a transaction in the next few years should be proactive in implementing many aspects of this legislation to be well prepared to realize the value from their rapidly growing company.”

— Daniel J. Love
Americas Director
Emerging & Growth Markets

Implications of Sarbanes-Oxley on Building Infrastructure

Investments in infrastructure and people, which enable effective internal controls, are of increased importance prior to an IPO.



Impact of Sarbanes-Oxley on Private Companies

Venture Capitalists Focus on:

- Companies “ready to be acquired”
- Appropriate internal controls

Acquirors Focus on:

- Increased due diligence
- Disclosure controls for future reporting entities
- Timing of when a transaction closes
- New reps and warranties, along with new deal terms and escrow holdbacks

Lenders Focus on:

- Increased information regarding internal controls
- Possible reporting requirements such as 1934 Act-like financial statements, internal control assessments and associated auditor’s reports

Underwriters Focus on:

- Increased due diligence
- Increased information regarding internal controls

Implementation Timeline

	PERIOD PRIOR TO IPO					IPO	FORM 10-Q/10-K
	36 MONTHS	24 MONTHS	18 MONTHS	12 MONTHS	6 MONTHS		
MANAGEMENT RESPONSIBILITIES							
Sections 302 & 906 – CEO & CFO Certification				■●		◆	◆ ⁽¹⁾
Section 304 – CEO & CFO Bonus Forfeiture						◆	
Sections 306 & 403 – Insider Transactions					■●	◆	
Section 404 – Internal Control Reports			■	■	■●	● ⁽²⁾	◆ ⁽³⁾
Section 806 – Whistle Blower				■●		◆	
ENHANCED FINANCIAL DISCLOSURES							
Section 401 – Off-Balance-Sheet & Pro Forma Disclosures					■●	◆	
Section 402 – Prohibition on Loans to Directors and Executives	■	■	■	■●		◆	
Section 406 – Code of Ethics	■	■	■	■●			◆ ⁽³⁾
Section 409 – Accelerated Reporting					■●	◆	
AUDIT COMMITTEE & AUDITOR							
Section 201 – Restrictions on Non-Audit Services	◆ ⁽⁴⁾						
Section 202 – Pre-Approval of Services by Audit Firm	■	■	■●			◆	
Section 203 – Rotation of Audit Partners	●					◆	
Section 204 – Auditor Reports to Audit Committees	■	■	■	■●		◆	
Section 206 – Limitation of Employment on Audit Team Members	● ^(4,5)					◆	
Section 301 – Audit Committee Selection and Independent Auditors' Oversight	■	■	■●			◆ ⁽⁶⁾	
Section 407 – Audit Committee Financial Expert	■	■	■	■●			◆ ⁽⁶⁾

◆ Date when compliance with requirement of the section of the Sarbanes-Oxley Act is required

● EY suggested timing for full compliance with applicable section of the Sarbanes-Oxley Act

■ Suggested timeline for preparation

(1) Certification required in the company's first 1934 Act filing

(2) Underwriters may request compliance in connection with an IPO

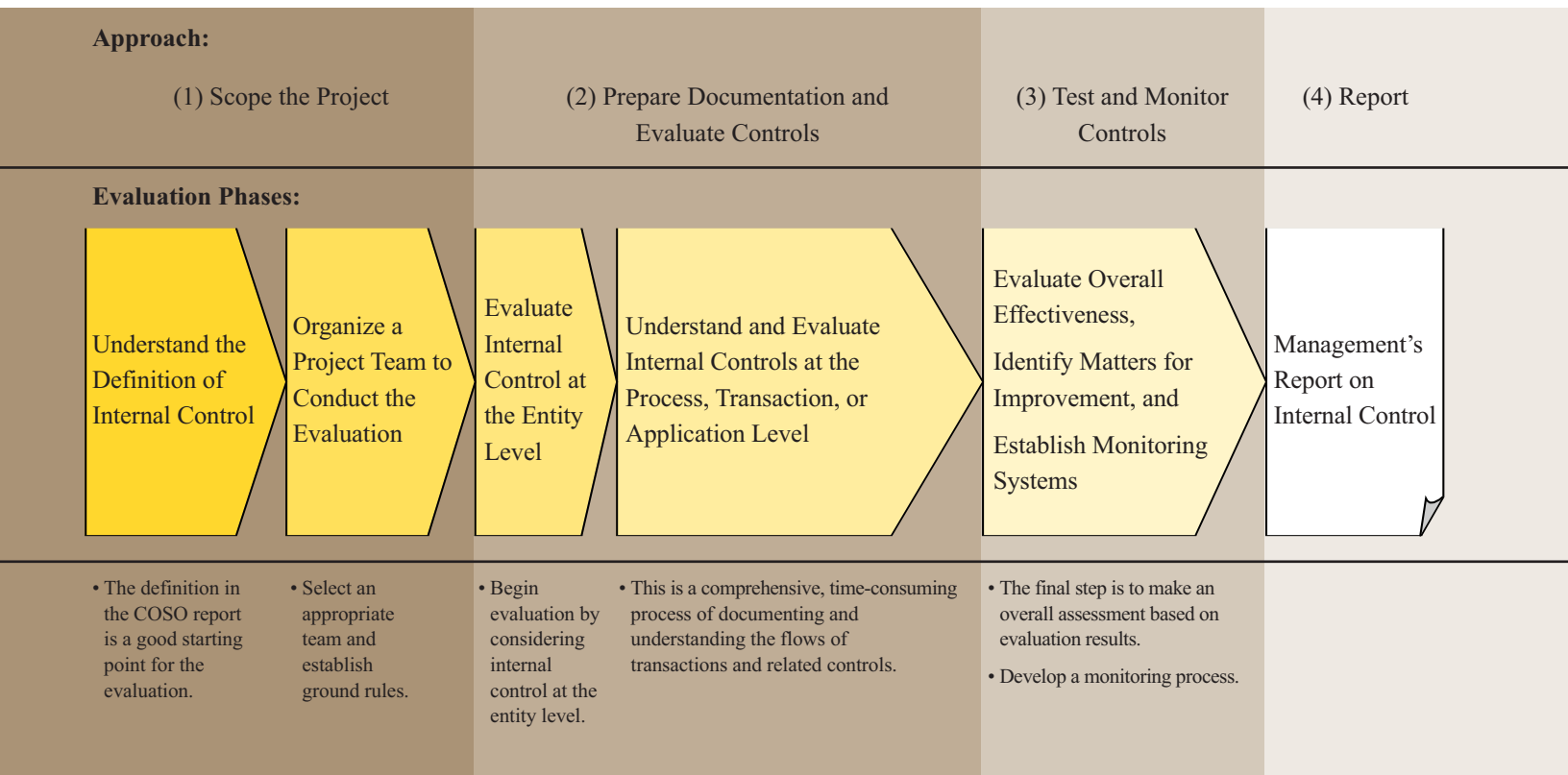
(3) Compliance is required in the first annual report on Form 10-K

(4) Compliance is required for all periods covered by the auditor's report in the registration statement filed with the SEC

(5) Compliance is required for certain new employment relationships beginning on or after May 6, 2003

(6) Refer to guidance provided by the respective national securities exchange or association (NYSE, NASDAQ) for specific requirements and timing

Getting Started: Methodology for Section 404



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