

Special Report

Answers To Frequently Asked Questions Raised By Non-U.S. Issuers Concerning The U.S. Sarbanes-Oxley Act And Related Requirements

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This Special Report is intended to provide, in a question-and-answer format, only a general overview of provisions of the U.S. securities laws applicable to foreign private issuers (other than those Canadian issuers that can avail themselves of the benefits of the U.S.-Canadian multi-jurisdictional disclosure system). The following material is not intended to provide or constitute legal advice, and no legal or business decision should be based on its contents.

This Special Report, which is current as of November 2006, is an updated and expanded version of a Special Report co-written by the author published at WSLR, March 2005, page 26.

Coverage Of The Sarbanes-Oxley Act

When people refer to the Sarbanes-Oxley Act, what exactly are they referring to?

The Sarbanes-Oxley Act of 2002 (the "Act") amended significantly the U.S. securities laws governing companies that have offered securities in the United States or are simply listed in the United States. Since the July 2002 effective date of the Act, the Securities and Exchange Commission (the "SEC"), in accordance with its mandate under the Act, has adopted a number of rules to implement provisions of the Act. One set of rules was directed at the U.S. stock exchanges, as a result of which certain corporate governance rules apply via the stock exchange listing standards as opposed to SEC rules.

Some provisions of the Act apply to all "issuers" — that is, all companies that have securities listed in the United States or that have conducted a registered public offering in the United States, as well as companies that are in the process of conducting a registered public offering in the United States. Others apply only to issuers that are "reporting companies" (that is, they file reports with the SEC, such as a Form 20-F) or only to companies that have publicly traded equity securities in the United States, but not companies with only public debt securities. Although non-U.S. issuers will continue to obtain waivers from stock exchange rules, as described below, none of the provisions of the Act contemplates waivers or exemptions that can be granted by the SEC staff.

If our company has only issued securities in the United States under Rule 144A, does the Act apply to us?

No. None of the provisions of the Act applies to your company unless your company's offering under Rule 144A was followed by a registered exchange offer and your company is still required to file reports with the SEC.

If our company has only obtained a Rule 12g3-2(b) exemption in connection with a Level I American Depositary Share (ADS) program or otherwise, does the Act apply to us?

No. None of the provisions of the Act applies to your company. The purpose of the Rule 12g3-2(b) exemption is to permit nominal activities in the U.S. capital markets without triggering the registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), which governs the obligations of reporting companies in the United States. Your company is not a reporting company. Even if you decide to voluntarily, and selectively, adopt "Sarbanes-Oxley" governance policies and procedures, you will not be subject to SEC oversight.

If our company has a Level I ADS program and upgrades to a Level II program, does the Act apply to us?

Yes, in connection with the listing as part of the Level II upgrade, your company will become a reporting company and will be subject to most of the provisions of the Act. This will be true whether or not you upgrade to a Level III program, and raise capital.

If our company has securities listed on a U.S. stock exchange, does the Act apply?

Yes, most of the provisions of the Act will apply to your company if your company is listed in the United States, whether or not your company also raised capital in a public offering.

If our company is about to go public in the United States through a public offering and has publicly filed a registration statement, does the Act apply to us?

Yes, some of the provisions apply immediately (the ban on personal loans to executives and liability of CEOs and CFOs for reimbursement due to accounting restatements) by reason of the filing which triggers "issuer" status, others would apply today if you had completed your offering and now had a reporting obligation, and will apply when you go public and become a reporting company.