

## Certified Sarbanes-Oxley Expert

### Official Prep Course Part A

#### Sarbanes Oxley Compliance Professionals Association (SOXCPA)

The largest association of Sarbanes Oxley Professionals  
in the world



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## Introduction

- The Sarbanes Oxley Compliance Professionals Association (SOXCPA) is the largest Association of Sarbanes Oxley Professionals in the world
- The Association develops and maintains a compendium of Sarbanes Oxley specific **risk and compliance topics**
- **Subject matter experts** review and update this body of knowledge
- The Association offers the certifications:
- **Certified Sarbanes-Oxley Expert (CSOE)**
- **Certified EU Sarbanes Oxley Expert (CEUSOE) - 8th Company Law Directive of the EU**



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## Introduction

- Certified Sarbanes-Oxley Expert (CSOE)
- Certified EU Sarbanes Oxley Expert (CEUSOE) - 8th Company Law Directive of the EU
- To find more:
- [www.sarbanes-oxley-association.com/Distance\\_Learning\\_and\\_Certification.htm](http://www.sarbanes-oxley-association.com/Distance_Learning_and_Certification.htm)



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- Certified Sarbanes-Oxley Expert (CSOE) - The exam is online
- To find more about the exam:
- [www.sarbanes-oxley-association.com/Questions\\_About\\_The\\_Certification\\_And\\_The\\_Exams\\_1.pdf](http://www.sarbanes-oxley-association.com/Questions_About_The_Certification_And_The_Exams_1.pdf)
- [www.sarbanes-oxley-association.com/CSOE\\_Certification\\_Steps\\_1.pdf](http://www.sarbanes-oxley-association.com/CSOE_Certification_Steps_1.pdf)



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# Introduction

- Instead of just training, you can have more
- **1. Training**
- **2. Certification** - If you pass the exam, you will be entitled to use the designation: **Certified Sarbanes-Oxley Expert (CSOE)**
- **3. Updates** - Become (at no extra cost) a member of the SOXCPA to **stay current** with new developments in Sarbanes Oxley in the USA and around the world
- You will continue to learn, month after month



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# Sarbanes-Oxley:

## Implementation and Compliance Training



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## Agenda

- The Need
- The Sarbanes-Oxley Act of 2002: An Overview
- The Act
- Companies Affected
- Employees Affected
- Effective Dates
- The Sarbanes-Oxley Act of 2002: Key Sections
- The players: SEC, PCAOB, EDGAR, SAG



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## Agenda

- The framework for compliance:
- **COSO** - The Framework on Controls for Financial Processes
- **COBIT** - The Framework that Focuses on IT
- The **Internal Control – Integrated Framework** by the **COSO committee**
- Using the **COSO framework** effectively
- **COSO/ERM** and Sarbanes Oxley compliance
- The **alignment of COSO and COBIT**
- **COSO ERM, ISO 17799, Common Criteria and COBIT**



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## Agenda

- IT Controls and **Sarbanes Oxley Act Relevance**
- Meeting the Information Security Requirements
- **Reports** used to Validate SOX Compliant IT Infrastructure
- **Reporting Weaknesses and Deficiencies**
- **Documentation** Issues
- SOX and Security **Monitoring**
- SOX **Testing** and what to test
- **Records Retention**
- **Real-time** Disclosure



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## Agenda

- Business Continuity and Disaster Recovery
- The **Vendors** and the Sox Industry
- **Computer Forensics** Investigation and Proactive Strategies
- **Business Intelligence**
- Cost
- Continuous Compliance
- 2005 and Beyond



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## IT and Information Security Professionals

- The Sarbanes-Oxley Act makes **corporate executives explicitly responsible** for establishing, evaluating and monitoring the effectiveness of internal control over financial reporting
- The role of **IT and Security is crucial** to achieving this objective



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## IT and Information Security Professionals

- IT is the foundation of an effective system of internal control over financial reporting
- IT professionals are accountable for the availability and integrity of information generated by IT systems...
- ...confidentiality is less important for Sarbanes Oxley Compliance



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## The need

- Written and enacted in response to large and public failures of corporate governance
- Enron, Arthur Anderson, WorldCom... became well known brand names - for all the wrong reasons
- C level executives arrested, became common TV news fare
- Document destruction, misleading financial statements, employees losing their retirement funds, CEO misconduct
- Purpose of restoring investor confidence after public clamoring for corrective action



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## The need

- Destruction of shareholder wealth in the Enron scandal: \$60,000,000,000
- Destruction of shareholder wealth in the WorldCom scandal: \$175,000,000,000



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## Headlines...

- **Enron** - restates earnings for past five years (\$586 million in losses)
- **Adelphia** - \$2.3 billion borrowed not on books
- **WorldCom** - inflating earnings by \$3.8 billion
- **Arthur Andersen... Critical Path... CSFB... HealthSouth... Homestore.com... ImClone Systems... Kmart... Merrill Lynch... Qwest... Tyco... U.S. Technologies**



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## The need

- Some events came as **a surprise** to some (not all) executives and **board members**
- They had **not the necessary knowledge and experience** or were **not aware of the risks** facing their companies
- This *knowledge gap* is **no longer acceptable**



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## Audit Committee... before SOX

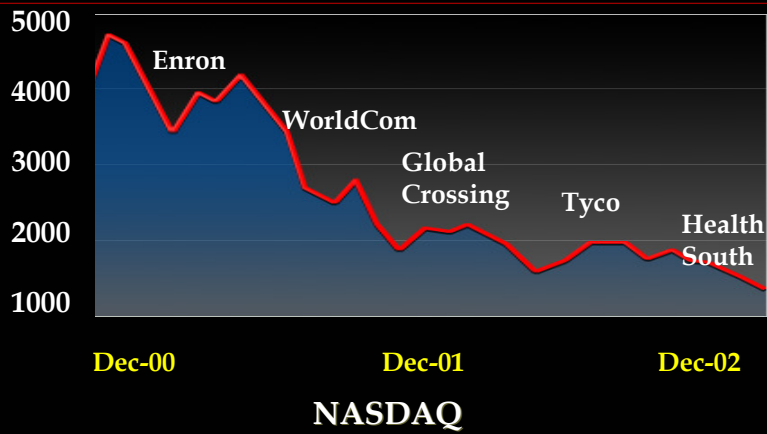
- **Role:** Meeting with the internal and the external auditors, reviewing quarterly and annually financial statements
- **In fact:** Most are outside directors, their familiarity with internal controls is low (or zero)
- **They rely** (heavily or totally) **on auditors...** who provided **assurance that was unsupported...**
- They were told what they wanted to hear - **no evidence**
- **They claimed lack of knowledge** believing that it meant also **lack of responsibility**



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## Corporate Governance



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## Sarbanes-Oxley Act of 2002



- Senator **Paul Sarbanes** and Representative **Michael Oxley** drafted the Sarbanes-Oxley Act of 2002



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## Approved by the *House* (of Representatives) and the *Senate*

- It was approved by the House by a vote of 423-3 and by the Senate 99-0
- Legislation sponsored by Banking Committee Chairman Paul Sarbanes
- Vote overwhelming in nature
- President Bush's supportive statements

To:

- 1. Tighten regulation of independent auditors and
- 2. Make company officers more accountable for their conduct



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## President Bush - Supportive statements

- July 30, 2002  
President Bush  
Signs Corporate  
Corruption Bill



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## President Bush - Supportive statements

### Target Audience

- This law says to honest **corporate leaders**: your integrity will be recognized and rewarded, because the **shadow of suspicion** will be lifted from good companies that respect the rules
- This law says to **corporate accountants**: the high standards of your profession will be enforced without exception; **the auditors will be audited; the accountants will be held to account**



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## President Bush - Supportive statements

- This law says **to shareholders**: the financial information you receive from a company will be **true and reliable**, for those who deliberately sign their names to deception will be punished
- This law says **to workers**: we will not tolerate reckless practices that artificially drive up stock prices and eventually destroy the companies, and the pensions, and your jobs



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## They are serious...

- Failure to comply with Sarbanes-Oxley exposes senior management to possible prison time (**up to 20 years**), significant penalties (**as much as \$5 million**), or both
- External Auditors will not sign their attestation of our control structure of compliance
- SEC investigation
- A minor problem may become a major issue
- **Problems with investors, lenders and customers**
- **Brand problems** - confidence will be weakened, affecting stock price



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## Sarbanes-Oxley was *rushed* into law

- Until early June of 2002, **passage** of Sarbanes-Oxley was **unlikely**
- It **wasn't even high** on the administration agenda
- Then... **WorldCom occurred** - from a political standpoint it was very serious
- A huge effect in Congress... in very short order, Sarbanes-Oxley was ***rushed*** into law
- There are **several problems and inconsistencies** - if there was **enough time**, would be worked out in the legislative process



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## Companies affected

- **US publicly traded companies and global companies with US publicly traded operations**
- All corporations that fall under the jurisdiction of the U.S. Securities and Exchange Commissions are subject to Sarbanes Oxley
- **Private firms interested in going public**
- **Private firms that may be the target of an acquisition or merger by a public firm (ensuring compliance of the final entity)**
- **Provisions don't apply to non-profits, but now we have new standards...**



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## Companies affected

- **Impact of Sarbanes-Oxley on Private & Nonprofit Companies**
- **SOX - Not intended to apply to them!**
- **But many try to comply!**
- **'We attempt to meet the intent of the legislation'!!!**
- **'It is important to maintain public trust as a non-profit organization'**



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## Companies affected

- Sarbanes Oxley compliance is a way of demonstrating due diligence...
- ... regardless of whether the act is actually mandatory
- Sarbanes Oxley compliance provides reasonable assurance that the organization is managed effectively and honestly



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## Does each provision apply to every company?

- No
- Some provisions apply to all issuers
- Others only apply to issuers that are "reporting companies" = Foreign companies registered and reporting with the SEC
- Reporting companies - file reports such as a Form 20-F or Form 40-F)
- Each provision describes which entities are covered
- Formal and informal interpretive guidance from PCAOB and SEC



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## Companies affected - Foreign Private Issuer (FPI)

- It is any foreign issuer other than a foreign government meeting the following conditions:
  - More than 50% of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depository receipts by persons that are *not residents* of the United States...
- ...and



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## Companies affected - Foreign Private Issuer (FPI)

*Any* of the following:

- The majority of the executive officers or directors are NOT United States citizens or residents, *or*
- More than 50 percent of the assets of the issuer are NOT located in the United States, *or*
- The business of the issuer is NOT administered principally in the United States



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## Foreign Private Issuer (FPI) and Domestic Issuer - Differences

- No 10-Q's and 10-K's are required to be filed
- Form 20-F as an **annual report** - Due **6 months** after fiscal year end
- Audited financial statements for the **last 3 years** - but a balance sheet for the earliest of the 3 years is not required



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## Companies affected - American Depository Receipt (ADR)

- Since 1927 - stock which trades in the United States (like regular stocks) but **represents shares in a foreign corporation**
- U.S. banks **reissue shares from foreign corporations** on the NYSE, AMEX, Nasdaq etc.
- Different countries, different currencies and values - difficulties for US investors
- Foreign companies: **Political, cultural and many other differences**
- **The solution: SOX!**



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## ADRs - Examples

- **BARCLAYS PLC (UK)** - Retail and commercial banking, credit cards, investment banking, wealth management and investment management services.
- **BP (UK)** - A holding company. Through its subsidiaries, is engaged in the exploration and production of crude oil and natural gas; refining, marketing, supply and transportation; and the manufacture and marketing of petrochemicals.
- **EDP (Portugal)** - Electric utility
- **Portugal Telecom (Portugal)**
- Available to U.S. investors as ADRs



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## ADRs - Examples

- **ALUMINUM CORPORATION OF CHINA LIMITED (China)** - Integrated alumina and primary aluminum production plants, alumina refineries, aluminum smelter and one research institute, which are engaged in the production, sales and research of alumina and primary aluminum.
- **ESKOM (South Africa)** - Engaged in generating, transmitting and distributing electricity to industrial, mining, commercial, agricultural and residential customers, and to redistributors
- <http://www.site-by-site.com/adr/toc.htm>



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## Types of ADR programs

- There are different types of ADR programs
- **A. Unsponsored shares:** ADRs that trade on the *over the counter (OTC) market* - directly between parties and not through a stock exchange
- **No regulatory reporting requirements**
- The foreign company has **no formal agreement with a custodian bank**
- Rarely issued today



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## Types of ADR programs

- **B. Level 1 depositary receipts:** The lowest sponsored shares that can be issued - there is a designated depositary acting as its **transfer agent**
- **Most ADRs** are issued through a Level 1 program
- Traded on the OTC market
- **Minimal reporting requirements with the SEC** - not quarterly or annual reports
- If a company chooses to issue reports, it is not required to follow GAAP
- Companies may decide to **upgrade** their share to a Level 2 or Level 3 program for **better exposure in the U.S. markets**



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## Types of ADR programs

- **C. Level 2 depositary receipts (LISTED):** Foreign companies must file a registration statement with the SEC.
- In addition, the company is required to file a **Form 20-F** annually - the equivalent of 10-K for U.S. companies
- Must follow **GAAP standards**
- **Shares can be listed on a U.S. stock exchange**
- **Sarbanes-Oxley applies to these companies - become reporting companies and will be subject to most of the provisions of Sarbanes-Oxley**



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## Types of ADR programs

- **D. Level 3 depositary receipts (OFFERING):** Companies are required to adhere to **stricter rules that are similar to those followed by U.S. companies**
- The foreign company is **not only taking some of its shares from its home market** and depositing them to be traded in the U.S. - it is issuing shares to raise capital
- **Form F-1 (offering)**
- **Form 20-F annually**
- **Must adhere to GAAP standards**
- **Material information given to shareholders in the home market, must be filed with the SEC - Form 8K**



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## Companies affected

- From 1990 to 2000, the number of foreign corporations listed on the two main U.S. exchanges increased 450%
- In the same ten year period, ADR programs increased over 500%
- More than 1,100 foreign companies file reports with the SEC (434 companies in 1990)



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## NASDAQ: Many Non-US Companies

Company Name	Country	Industry	
FUJIFILM	Nissan Motor Co., Ltd.	Japan	Automobiles
	Fuji Photo Film Co., Ltd.	Japan	Leisure Equipment & Prod.
	Mitsui Holdings Inc. ADR	Japan	Insurance
	Mitsui & Company, Ltd.	Japan	Trading Companies & Distrib.
ANGLO AMERICAN	Anglo American plc	South Africa	Metals & Mining
	Kirin Brewery Company, Limited	Japan	Beverages
	Sanyo Electric Co., Ltd.	Japan	Household Durables
	Ito-Yokado Co., Ltd.	Japan	Multi-line Retail
	LM Ericsson Telephone Company	Sweden	Communications Equipment
ERICSSON	Teléfonos de Mexico	Mexico	Telecommunications
	Teva Pharmaceutical Industries Ltd.	Israel	Pharmaceuticals
	AB Volvo	Sweden	Machinery
	AB Electrolux	Sweden	Household Durables
TEVA	WPP Group plc	United Kingdom	Media
	Ajax Nobel N.V.	Netherlands	Chemicals
	CRH PLC	Ireland	Construction Materials
	Net Services Comunicacao SA	Brazil	Cable TV
	Ryanair Holdings plc	Ireland	Airlines
	Infosys Technologies Limited	India	IT Services
SANYO	Grupo Financiero Galicia	Argentina	Bank
	Telenor ASA	Norway	Diversified Telecom Svcs.
	TeliaSonera AB	Sweden	Communications Services



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## Companies affected

- **Hundreds of European and Asia/Pacific-headquartered companies are dually listed** on two or more stock exchanges
- **470 non-US companies** are listed on the **New York Stock Exchange**, with a combined market capitalization of \$3.8 trillion – or **30 per cent of the total value of capitalization** of companies quoted on the exchange



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## Employees affected

- **Executive management – CEO, CFO**
- **Financial officers, controllers, accounting managers** and any one responsible for developing and deploying compliance programs
- **Auditors** (external and internal) and Information System auditors responsible for assessing or attesting to the adequacy of internal controls
- Achieving **compliance** involves employees from many functional groups that generate data for financial reporting, including **IT, security and business operations personnel**



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## Employees affected

- **CIOs** will have to sign certifications as to information asset security and protection. They must certify and persuade the CEO and CFO that the controls are working properly. **They may be held liable for not exercising due care - due diligence**
- **Line managers and operational personnel** who are accountable for their own internal control program
- **Risk managers, consultants, legal counsel, compliance officers**, and anyone connected with risk management in general



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## (Employees... affected)

- **'I believe that every time IT needs budget allocations they say the letters "SOX" and the CEO pulls out his checkbook'**

Anonymous admin



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## When?

- SOX compliance dates are governed by whether or not the company is an accelerated filer
- Definitions can be found at General Rules and Regulations, promulgated under the Securities Exchange Act of 1934



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## Accelerated filer

- An issuer **after it first meets the following 4 conditions** as of the end of its fiscal year:
  - **i. The aggregate market value** of the voting and non-voting common equity held by non-affiliates of the issuer is **\$ 75 million or more;**
  - **ii. The issuer has been subject to the requirements of Section 13(a) or 15(d)** for a period of **at least twelve calendar months;**
  - **iii. The issuer has filed at least one annual report** pursuant to **Section 13(a) or 15(d);**
  - **iv. The issuer is not eligible** to use Forms 10-KSB (Optional Form for **Annual** and Transition Reports of **Small Business Issuers** and 10-QSB (**Quarterly** and Transition Reports of **Small Business Issuers** for its annual and quarterly reports)



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## When?

- The Sarbanes-Oxley Act requires public companies to attest to the effectiveness of their internal controls and processes, including information systems, **for fiscal years ending June '04 and beyond**
- Compliance with **Section 404** originally became effective on **June 15, 2004**, for all SEC reporting companies with a market capitalization in excess of \$75 million. That was later **extended to November 15, 2004**
- For all other companies that file periodic reports with the SEC, the compliance deadline is **April 15, 2005**



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## Extension of compliance dates SEC Update: March 2, 2005

- Extension of compliance dates for non-accelerated filers and foreign private issuers (FPI) regarding internal control over financial reporting requirements pursuant to **Section 404** of the Sarbanes-Oxley Act
- Must begin to comply with the internal control over financial reporting requirements for its first fiscal year ending on or **after July 15, 2006**
- The extension also **applies to the portion of the CEO/CFO (Section 302) certification**, that relates to internal control
- [www.sec.gov/news/press/2005-25.htm](http://www.sec.gov/news/press/2005-25.htm)



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**July 15, 2007 for non-accelerated filers...**  
**<http://www.sec.gov/news/press/2005-134.htm>**

- **September 21, 2005:** SEC voted to postpone for an **additional year** the compliance date for non-accelerated filers...
- ... including a **foreign private issuer** that is a **non-accelerated filer**.
- These companies will be required to comply with the Section 404 requirements for its first fiscal year ending on or after **July 15, 2007**
- This is a one-year extension from the previously established July 15, 2006.
- **A foreign private issuer that is an accelerated filer** and that files its annual reports on Form 20-F or Form 40-F, must continue to comply with the Section 404 requirements for its first fiscal year ending on or after July 15, 2006



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