**NAME: AMBAIOWEI ANGEL EBIKIO**

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**QUESTION:**

What are the main governance aspects of the Sarbanes-Oxley Act?

The Sarbanes-Oxley Act of 2002, also known as the “Public Company Accounting Reform and Investor Protection Act” (in the Senate) and “Corporate and Auditing Accountability Responsibility, and Transparency Act” (in the House) and more commonly called Sarbanes-Oxley, Sarbox or SOX, is a United States federal law that set new or expanded requirements for all U.S. public company boards, management and public accounting firms. A number of provisions of the act also apply to privately held companies, such as the willful destruction of evidence to impede a federal investigation. The Sarbanes-Oxley Act specifically regulates markets, brokers, dealers, accounting and auditing, on-going government and shareholder disclosure by reporting companies, insider trading, anti-fraud, proxy regulation and so forth. The six main areas of the act are as follows:

1. Oversight Board: The Public Company Accounting Oversight Board was created to oversee the audit of public companies. This board sets standards and rules for audit reports. All accounting firms that audit public companies must register with the oversight board. It also inspects, investigates, and enforces compliance from these registered firms. Among other things, this new board will:

* Be responsible to the SEC.
* Have supervisory powers over the audit process of publicly traded companies. Thus it is not intended to conflict with state regulation and supervision of accountants serving private clients.
* Be made up of five persons each appointed for a five year term, two of whom will be CPA’s and three of whom cannot be CPA’s.
* Be funded by fees from all publicly traded companies thus better assuring its independence from the accounting industry.

1. Auditor Independence: Auditors now have a list of non-audit services they can’t perform during an audit. The Act also imposes a one-year waiting period for audit firm employees who leave an accounting firm to become an executive for a former client. In addition, the former firm must wait one year before performing any audit services for the new employer. Among other things, the act:

* Requires that all audit committee members must be independent directors and not affiliated with the company other than in their capacity as directors.
* Makes the audit committee directly responsible for the appointment, compensation and oversight of work of the auditors.
* Requires that audit committee members must have free reign to interview and question auditors without the company’s executive officers being present.
* Requires that the audit committee develop procedures for addressing complaints regarding the audit process.
* Requires that the audit committee includes at least one competent financial person.
* Bars members of the audit committee from accepting consulting fees from the company.

1. Greater financial disclosures: transactions and relationships that are off-balance sheet but that may affect financial status now must be disclosed. Personal loans from a corporation to its executives are now largely prohibited. Annual reports must include a report stating the management is responsible for the internal control structure and procedures for financial reporting.
2. Conflict of interest disclosures for analysts: conflict of interest disclosures now need to be made by research analysts who make public appearances or offer research reports. These disclosures need to contain certain information about the company that is the subject of the appearance or report. The analyst has to report whether he or she holds any securities in the company or received corporate compensation. Brokers and dealers have to disclose if the public company is a client.
3. Attorney’s Responsibilities: There are now minimum standards of professional conduct for attorneys representing public companies before the SEC. these include a rule requiring an attorney to report securities violations to the CEO.
4. Corporate and Criminal Fraud Accountability: Altering, destroying, concealing or falsifying records or documents with the intent to influence a federal investigation or bankruptcy case is subject to fines and up to 20 years imprisonment. New audit work papers must be retained for five years. Any person who knowingly defrauds shareholders of publicly traded companies is subject to fines or imprisonment.

Other SOX corporate governance guidelines include:

1. An increase in the direct responsibility of senior corporate managers for the quality of their company’s financial reports and disclosures.
2. Limitations on the types and nature of services that auditors can provide to a publicly traded, audit client.