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What are the main governance aspects of the Sarbanes–oxley act?

1. **It reformed and re-empowered the corporate board of directors.**

The most prominent change SOX engendered was a shift from a perspective that the board serves management to a perspective that management is working for the board. “That’s what our corporate structure in the U.S. intended, but you were seeing it exercised less in the day-to-day and more in the formalities of documentation,” says Ralph DeMartino, chair of the global securities group at Cozen O’Connor. “That’s been a radical shift.” SOX also recognized that director independence is necessary for the board to serve effectively as a check on management. It allows for director liability if the board fails to exercise the appropriate oversight.

1. **It encouraged the adoption of corporate codes of ethic.**

SOX required companies to disclose whether their senior executives and financial officers followed a code of ethics. If they didn’t have one, they had to explain why. Around the same time, both the New York Stock Exchange and Nasdaq adopted rules requiring that listed companies adopt and disclose a code of conduct. While the SOX rule didn’t require adoption of a code, it made clear that the SEC expected one. “Over the past 20 years, the government has been encouraging employers to adopt ethics and compliance programs in a number of ways,” says Chip Jones, a Littler Mendelson shareholder who counsels clients on such programs.

1. **It created the PCAOB.**

Accounting firms that audit public companies must register with the PCAOB, and are subject to annual or triennial agency inspections, depending on their size. Currently the Board is in various stages of exploration of new initiatives in the wake of the financial crisis. They include new ways of promoting the transparency of audits, updating audit report formats, expanding foreign inspections and ensuring the independence of auditors. This includes a measure to require mandatory firm rotation, or term limits, between a public company and its audit firm.

1. **It both clarified and complicated the role of in-house counsel.**

SOX created an SEC rule that requires in-house and outside lawyers practicing before the SEC to report evidence of a material violation to the company’s CLO or CEO. The CLO then must investigate the evidence and take reasonable steps to respond to the report. If the reporting attorney isn’t satisfied with that response, the lawyer must then report the potential misconduct to the audit or another committee.

1. **It laid the cultural roots of shareholder activism.**

Shareholder activism is increasing, with Dodd-Frank pushing forward shareholder proxy access and “say on pay” compensation advisory rules. Such trends have their roots in SOX and the Enron-era corporate scandals, which shoved issues like executive compensation and board independence into the spotlight. “This evolving conversation about greater shareholder democracy is definitely traceable back to the kind of ethos that SOX gave rise to,” Eaddy says.

1. **It made public companies more expensive to run.**

There’s no doubt that SOX compliance is costly. By their fourth year of SOX compliance, most organizations spend in the range of $100,000 to $1 million annually on compliance-related activities, according to a 2011 survey by Protiviti, an audit and risk consultancy. That doesn’t include the time and focus board members and executives must spend on compliance matters. The survey also found that most companies in their first year of SOX compliance say the costs outweigh benefits. However, after the first year, they consistently take the opposite view, identifying benefits such as a better understanding of control design and increased effectiveness and efficiency of operations.

1. **It empowered the SEC.**

Among other measures, SOX extended the statute of limitations for the SEC to pursue actions and increased the penalties at their disposal. According to Currier, SOX changed the balance of power between companies and prosecutors, putting prosecutors in the driver’s seat. SOX also made clear what disclosures were required of public companies, so now it’s easier for the agency to pursue enforcement. “The core values that you have to follow when making disclosures are much clearer now than they were, say, 10 years ago,” Tolbert says. Thomsen says the SEC has gotten quite a bit of use from the ability under SOX to distribute disgorged money to wronged investors through Fair Funds. According to the Government Accountability Office, $9.5 billion in Fair Funds were ordered from 2002 through February 2010, most prior to May 2007. The disgorged funds come from penalties from violators, either companies or individuals.

1. **It changed things for private companies, too.**

Private companies that aren’t subject to SOX reforms have nonetheless adopted some of its provisions as best practices, such as ensuring the independence of directors and adopting audit and audit committee procedures. “While Sarbanes-Oxley has transformed public companies, it’s transformed private companies even more,” Blonder says. “They do it on a voluntary basis because it’s good business and it provides transparency, whether it’s to banks, private equity firms or other financing sources.” That’s another factor bringing SOX’s effects to private companies: Increasingly, various sources of financing have an expectation of solid corporate governance and transparency. And some private companies are making sure they’re ready for the demands of future public listing.