

## LEGAL Q&A

**Q** Can a privately-held company benefit from adopting internal controls over financial reporting as required by the Sarbanes-Oxley Act ("SOX") even though it is not subject to SOX?

**A** Yes. Section 404 of SOX requires the management of a public company to report on the effectiveness of the company's internal control procedures over financial reporting in reports filed with the SEC. Examples of internal controls include procedures to ensure that transactions are properly authorized and recorded and that assets are protected from unauthorized use.

Although private companies generally are not subject to SOX, a private company with a SOX compliant system of internal controls may be a more attractive acquisition candidate for a public acquirer. The acquiring public company will be required to integrate the private company's financial statements with its own, and, after closing on the transaction, the CEO and CFO of the public company are required to certify as to the reliability of the Company's system of internal controls over those financial statements. Accordingly, if the exit strategy for the owners of a private company includes the sale to a public company, compliance with Section 404 of SOX while private may provide a significant advantage.



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