



## **ASC Contracts™ promotes Sarbanes-Oxley Compliance**

**Advanced Software Concepts**  
235 Terence Matthews Crescent  
Suite 200, Kanata, Ontario  
K2M 2B3 Canada  
[www.ascnet.com](http://www.ascnet.com)

t: [613]599.2087  
f: [613 599.5311

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Advanced Software Concepts  
Suite 200  
235 Terence Matthews Crescent  
Kanata, Ontario  
K2M 2B3  
(613-599-2087)

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## 1.0 Overview

Corporate governance has moved to the forefront of the global business agenda. In recent years, there have been several events precipitating the introduction of measures to tighten controls and accountability in business practices. The collapse of the high tech market, coupled with an overall market downturn quickly became an issue within North America and around the globe. The scandals surrounding several large American corporations have caused market uncertainty worldwide, and prompted a far-reaching look at how future crises can be prevented, with the US introduction of the Sarbanes-Oxley act. For executives, directors, shareholders and their advisors, adherence to the highest standards of good governance has never been more important.

“Inattention to good corporate governance practices over the past decade or more is at the heart of what has gone so terribly wrong in corporate America in the past few years. If significant steps are not taken to revisit and remodel corporate governance practices, corporate America will continue to attract the anger and animosity not only of disillusioned shareholders, but also of a much broader cross-section of American society.”

-- SEC Chairman William H. Donaldson, March 24, 2003<sup>1</sup>

## 2.0 What is the Sarbanes-Oxley Act?

In an effort to restore investor confidence, the US Congress passed the Sarbanes-Oxley Act (SOA) that President Bush signed into law on July 30, 2002. The Act legislates acceptable conduct regarding the retention of electronic and paper records for public companies, executives and the general population. It establishes new standards for corporate accountability and increases penalties for corporate wrongdoing. For example, penalties under the Securities Exchange Act of 1934 are amended from “\$1,000,000, or imprisoned not more than 10 years ... [to] \$5,000,000, or imprisoned not more than 20 years<sup>2</sup>.” The act is intended to protect investors by improving the accuracy and reliability of corporate disclosures. Subjects addressed in the Act include

- public company accounting oversight board
- auditor independence
- corporate responsibility
- enhanced financial disclosures
- analyst conflicts of interest
- commission resources and authority
- studies and reports
- corporate and criminal fraud accountability
- white-collar crime penalty enhancements
- corporate tax returns
- corporate fraud and accountability

The SOA enforces the following key requirements on organizations that issue securities within the United States of America:

- Auditor independence and audit partner rotation.
- Increased corporate CEO / CFO responsibility and accountability.

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1. <http://www.sec.gov/news/speech/spch032403whd.htm>

2. Sarbanes-Oxley Act Section 1106.

- Criminal penalties for violations of the Act.
- Enhanced financial disclosures, with rules surrounding the timeliness of disclosure.

## **2.1 WHAT IMPACT DOES SARBANES-OXLEY HAVE ON CORPORATIONS?**

The SOA has wide-reaching implications for American organizations. Industry experts project that similar legislation is sure to follow in other leading global economies. The Sarbanes-Oxley Act of 2002 is one of the most important acts of legislation affecting corporate governance, financial reporting, and accounting practices. Corporations are now required to monitor, track, and manage the creation and reporting of all financial and supporting information that is required for governmental reporting. The financial information appearing in these reports is a summary of what actually happened in the previous financial period. In many cases, these finances are in part determined by contracts that outline the corporate and financial expectations. To address the new legislation, organizations will need to be compliant in a number of areas.

### **2.1.1 Auditor Independence**

#### **2.1.1.1 Audit Requirements**

Section 204 – Auditor reports to audit committees amends the Securities and Exchange Commission (SEC) regulations with respect to Audit Reports. It recommends disclosure of key written communication between the auditor and the client, including engagement letters, independence letters and accounting policies.

Organizations must ensure that authorized employees have quick access to these documents when required.

### **2.1.2 Corporate responsibility**

#### **2.1.2.1 CEO / CFO Responsibility**

Section 302 – Corporate responsibility for financial reports states that a company’s CEO and CFE must each certify quarterly and annually reports. This includes certifying that he or she reviewed the report, and that based on his/her knowledge the report does not make any untrue statements or omissions, and that the report is a fair representation of the company’s financial situation. These individuals are also responsible for establishing and enforcing Disclosure Controls and Procedures within their organization.

Reporting on financials and implementing Disclosure Controls and Procedures require a software solution that integrates financial elements with a flexible work-flow engine.

### **2.1.3 Enhanced financial disclosures**

#### **2.1.3.1 Disclosures**

Section 401 – Disclosures in periodic reports requires registrants to provide an overview of contractual obligations in a tabular form.

Many organizations are currently evaluating contract management solutions available in the market today. First and foremost, they are searching for solutions that store the agreements themselves. Additionally, they are looking for solutions providing robust and flexible search engines and reporting tools. Another key requirement is for a system that gives them control

over contractual terms and conditions, business rules surrounding financial values, and a workflow engine that automates approval processes.

#### **2.1.3.2 Internal Control and Approval**

Section 404 – Management assessment of internal controls states that each annual report must include an internal control section which includes an assessment of the effectiveness of their internal control process. These controls are to ensure:

- The company’s transactions are properly authorized.
- The company’s assets are safeguarded against unauthorized use.
- The company’s transactions are properly recorded and reported.

To meet these requirements, companies require a system that automates and tracks the approval process for all contractual agreements on both the “buy” and “sell” sides. Interfaces from contractual systems to financial systems are key to reduce user error and ensure accurate reporting.

#### **2.1.3.3 Real-time disclosure**

Section 409 – Disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuers.

### **2.1.4 Corporate and criminal fraud accountability**

#### **2.1.4.1 Document altering**

Section 802 – Destruction or alteration of records relating to federal investigations and bankruptcy is punishable with a fine and/or up to twenty years imprisonment. Additionally, auditors are required to maintain all workpaper for five years including correspondence, memoranda, and electronic records.

### **2.1.5 White-collar crime penalty enhancements**

#### **2.1.5.1 Responsibility for financial reports**

Section 906 – The Chief Executive Officer and the Chief Financial Officer must issue a written statement certifying that the periodic report of financial statements complies with the appropriate section of the Securities Exchange Act of 1934 and that the information represents the financial conditions and results of operations of the issuer.

### **2.1.6 Corporate fraud and accountability**

#### **2.1.6.1 Tampering or interfering with records**

Section 1102 – Penalties for those tampering with, altering, or destroying a record or impeding an official investigation include the fines outlined under title eleven, imprisonment for not more than twenty years, or both.

## **3.0 Contract Management features offer executive safeguards**

### **3.1 HOW DOES ASC CONTRACTS PROTECT YOUR ORGANIZATION?**

ASC Contracts provides a broad suite of capabilities to help corporations address the requirements of Sarbanes-Oxley. While technology alone will not provide a total solution to

enable a corporation to meet the regulations, it will provide an infrastructure that can be used in conjunction with business processes and education to deliver a new way of working that ensures corporate compliance and accountability. Here are some of the features that ASC Contracts offers to satisfy some of the Sabanes-Oxley requirements.

<b>Sarbanes-Oxley Requirement</b>	<b>System Requirement</b>	<b>ASC Contracts Differentiator/Benefits</b>
204. Audit Requirements	Readily accessible report details for independent audits	<ul style="list-style-type: none"> <li>• Comprehensive searching and reporting tools.</li> <li>• Saved searches and reports customizable with customized recipient list.</li> <li>• Workflow and notifications to ensure that organizations rules are enforced.</li> </ul>
302. Corporate responsibility for financial reports	Issue financial reports and personally sign for content	<ul style="list-style-type: none"> <li>• Control terms and conditions of key legal agreements</li> <li>• Interface with financial systems to limit user error</li> </ul>
401. Disclosure in periodic reports	Contract overview in tabular form	<ul style="list-style-type: none"> <li>• Control financials, restricting changes to authorized users</li> </ul>
403. Disclosure of transactions involving management and principal stockholders		<ul style="list-style-type: none"> <li>• Flexible workflow engine allows for automatic notification and routing of agreements for Signature / Approval</li> </ul>
404. Management assessment of internal controls	Proper authorization and tracking of transactions and assets	<ul style="list-style-type: none"> <li>• Flexible workflow engine allows for automatic notification and routing of agreements for Signature / Approval</li> <li>• Change Management controls, tracking, and notifications</li> </ul>
409. Real time issuer disclosures	Accurate information readily available through searching and reporting	<ul style="list-style-type: none"> <li>• Bar code recognition ensures signed images are at your fingertips for an audit with unrepudiable contract content</li> <li>• Flexible search capabilities allow authorized users to answer auditor's questions</li> </ul>
802. Criminal penalties for altering documents	Unalterable storage of records and changes. Complete history of change details. Business rules for modifications and approvals. Notifications of changes.	<ul style="list-style-type: none"> <li>• Audit trail tracks changes by each user</li> <li>• Secure bar-coding of agreements safeguards against document tampering</li> <li>• Single document repository for all contracts and related documents</li> </ul>
906. Corporate responsibility for financial reports	Advanced searching and reporting tools for development of customized reports.	<ul style="list-style-type: none"> <li>• System partitioning controls users access</li> <li>• Online approval and tracking with digital signatures.</li> </ul>
1102. Tampering with a record or otherwise impeding an official proceeding	All document details are tracked, access rights to document creation, modification, and deletion.	<ul style="list-style-type: none"> <li>• Audit trail tracks changes by each user</li> <li>• Access Control Lists define level of user access to documents</li> <li>• Secure bar-coding of agreements safeguards against document tampering</li> </ul>

## **4.0 Conclusion**

The Sarbanes-Oxley legislation came into force in 2002 introducing major changes to the regulation of financial practice and corporate governance. Organizations are now required to monitor, track, and manage the creation and reporting of all financial and supporting information required for governmental reporting. ASC Contracts offers companies a rich suite of tools to automate and simplify business processes that generate or that are generated by legal agreements thereby assisting corporations to address the Sarbanes-Oxley requirements.

ASC Contracts begins with a standardized contract management framework that is configured and customized to meet the exact needs of your organization. Standard with ASC Contracts is the centralized storage of all contract information including signed contract images and supporting documents.

With customized workflow and business rules, ASC Contracts ensures that all corporate contracts comply with established terms and conditions. Deviations from the predetermined standard terms and conditions can trigger notifications to management and the use of and tracking of digitally signed documents can streamline the internal approval process.

All generated contracts, in Adobe PDF or Microsoft Word formats, include a barcode which automates the capture and storage of the signed contract with the contract data. The bar code encodes the contract details and ensures that the contract content is not subject to dispute. All details of contract changes, transmissions, and captured contracts are recorded in the contract history.

Using XML and Java, ASC Contracts provides mechanisms for enterprise application integration and mitigates errors introduced by re-keying or references to out of date contract details.

Access Control Lists ensure that users have authorization levels appropriate to their role. Access Control Lists can be used to restrict changes to a contract or ensure that the contract is not accessible, enhancing the security of the contract management system.

Many of the required changes for Sarbanes-Oxley compliance include increased financial tracking, reporting, and transparency. ASC Contracts offers a number of benefits to organizations striving to meet Sarbanes-Oxley compliance. After all, Contracts do form the first step in the process of tracking an organization's compliance with regulations.