

Guide for Foreign Private Issuers: Preparing Your Upcoming Annual Report on Form 20-F

Part I of this Guide summarizes certain rule changes affecting the Annual Report on Form 20-F for fiscal year 2005 to be filed by foreign private issuers on or prior to June 30, 2006 (the "2005 Annual Report").¹ Part II of this Guide provides a brief overview of certain disclosure and certification requirements arising from Sarbanes-Oxley Act-related amendments to the Annual Report for fiscal year 2006 (the "2006 Annual Report") and the Annual Report for fiscal year 2007 (the "2007 Annual Report").

This Guide is not intended to be a cumulative review of rules applicable to foreign private issuers mandated by the Sarbanes-Oxley Act ("Sarbanes-Oxley"), the securities offering reforms that became effective on December 1, 2005, or any other requirements applicable to Annual Reports. We have previously distributed White & Case memoranda discussing the provisions of Sarbanes-Oxley and the securities offering reforms and changes affecting the preparation of Annual Reports on Form 20-F covering years prior to the 2005 fiscal year. These memoranda are available on our website at www.whitecase.com.

Part I: Disclosure Requirements Applicable to 2005 Annual Reports

This section contains a brief summary of the following new reporting obligations:

- **First-time application of International Financial Reporting Standards ("IFRS").** Foreign private issuers that change the accounting principles used in preparing their financial statements to IFRS may, in certain circumstances, include in their 2005 Annual Report financial statements and selected financial data covering a reduced number of prior years. If a registrant uses this accommodation, the coverage of its management's discussion and analysis of financial condition and results of operations should be limited accordingly to focus on the previous two fiscal years and on the corresponding reconciliation from IFRS to generally accepted accounting principles in the United States ("US GAAP") for those two years.
- **New disclosure requirements relating to audit committees.** Sarbanes-Oxley has mandated new disclosure requirements for the 2005 Annual Report relating to the independence of audit committee members and of the named audit committee financial expert.
- **New check boxes on cover page of Form 20-F with respect to registrant's status.** The Form 20-F cover page contains new check boxes relating to the registrant's status in connection with the securities offering reforms adopted by the U.S. Securities and

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For further information, please contact the attorney at White & Case LLP with whom you regularly discuss securities/capital markets matters. Alternatively, you may contact one of the attorneys identified at the end of this update.

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¹ For purposes of this Guide, we have assumed a fiscal year ending December 31, 2005. If your company does not have a calendar fiscal year, the timing of the applicability of the new disclosure requirements discussed in this Guide may differ. Please contact us with any questions you may have about when the new disclosure requirements come into effect for your company's Annual Report.

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Exchange Commission (the "SEC") that became effective on December 1, 2005.

- **Disclosure of material unresolved SEC staff comments.** Certain registrants that have received written comments from the SEC staff regarding their periodic reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), more than 180 days before the end of the fiscal year to which the Annual Report relates must disclose the substance of any material unresolved comments.
- **Nasdaq rules relating to home country corporate governance practices.** Foreign private issuers with securities traded on Nasdaq that elect to follow certain home country corporate governance practices in lieu of Nasdaq requirements, as permitted under the amended Nasdaq rules, are no longer required to request an exemption from Nasdaq, but instead must disclose in their 2005 Annual Reports the specific Nasdaq requirements with which they are not complying and the alternative home country practices they do follow.

First-Time Application of International Financial Reporting Standards

In 2002 the European Commission adopted a regulation requiring companies incorporated under the laws of a European Union ("EU") member state and whose securities trade publicly in the EU to adopt IFRS, as developed by the International Accounting Standards Board, for each fiscal year starting on or after January 1, 2005. Other countries, such as Australia, have adopted similar rules incorporating IFRS into their home country accounting standards, or otherwise requiring adherence to IFRS.

The SEC has adopted changes to Form 20-F that are intended to ease the burdens that foreign private issuers may face when they present financial statements in an Annual Report under IFRS for the first time for the fiscal year starting on or after January 1, 2007, or an earlier financial year. Accordingly, these amendments apply to the 2005 Annual Reports of registrants that change their basis of accounting to IFRS for the 2005 fiscal year. The amendments also require certain disclosures from all foreign private issuers that adopt IFRS for the first time during any fiscal year. The SEC did not alter existing requirements of Form 20-F to provide an audited reconciliation of financial statement items to US GAAP.²

The amendments include revisions to Items 3.A, 5 and 8.A of Form 20-F to allow a foreign private issuer to include the following in its Annual Report for the first fiscal year in which it has adopted IFRS:

- audited financial statements prepared under IFRS for the two most recently completed fiscal years (rather than for the three years that otherwise would have been required under Item 8.A of Form 20-F) if (i) the Annual Report relates to the 2007 fiscal year or an earlier fiscal year, (ii) the registrant states "unreservedly and explicitly" that its financial statements comply with IFRS and (iii) the audited financial statements for the registrant's fiscal year to which the Annual Report relates are prepared in accordance with IFRS;³ and
- selected financial data prepared under IFRS for the two most recently completed fiscal years (rather than for the five years that otherwise would have been required under Item 3.A of Form 20-F) so long as five years of selected financial data based on US GAAP are still provided in accordance with Item 3.A.1.⁴

² Item 17 of Form 20-F provides the standards for the US GAAP reconciliation to be included in the financial statements. In addition to the US GAAP reconciliation required by Item 17, pursuant to Instruction 3 to Item 8 of Form 20-F, foreign private issuers using home country GAAP or other accounting principles in preparing their primary financial statements prior to the adoption of IFRS must include a reconciliation from the previously used accounting principles to IFRS, as required by IFRS.

³ Please note that pursuant to Item 8.A.3 of Form 20-F, the auditors will need to provide an unqualified opinion as to the registrant's compliance with IFRS. Additionally, the instructions to Form 20-F provide that if the registrant has voluntarily published audited financial statements for a third financial year in IFRS (or was required to publish such information pursuant to other regulations), it must include the third year in its financial statements filed with its Annual Report.

⁴ The new rules do not change the existing provision of Form 20-F permitting registrants in the years immediately following their initial public offering to include fewer than five years of selected financial data prepared in accordance with US GAAP.

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Management's discussion and analysis of financial condition and results of operations required under Item 5 of Form 20-F for registrants providing financial statements for only two prior years prepared under IFRS should (i) focus on the two prior years prepared in accordance with IFRS, (ii) not discuss in the narrative other financial information that is not in the financial statements and (iii) discuss the corresponding reconciliations from IFRS to US GAAP and explain any other differences between US GAAP and IFRS necessary for an understanding of the financial statements as a whole. The discussion should also include the registrant's application of elective or mandatory exceptions under IFRS.

The registrant may, but is not required to, include financial statements for a third prior year in US GAAP or in its other previously used accounting principles. However, if included, the registrant must include (or incorporate by reference) in the Annual Report (i) financial statements prepared using the previously used accounting principles for the *two years* prior to the year in which the registrant adopted IFRS, (ii) selected historical financial data using the previously used accounting principles for the four years prior to the year in which the registrant adopted IFRS and (iii) a management's discussion and analysis of financial condition and results of operations covering those two years (in accordance with the specific instructions in Form 20-F), which discussion must be separate from the comparable discussion of the IFRS financial statements.

The EU has endorsed almost all of the IFRS standards, but with some exceptions. Therefore, some registrants may apply accounting standards as adopted by the EU ("EU GAAP") in a manner that does not fully comply with IFRS, and would therefore be unable to "unreservedly and explicitly" state that their financial statements comply with IFRS. To accommodate these registrants, the new SEC rules permit such registrants to include the limited financial

information discussed above so long as they (i) provide audited US GAAP and IFRS reconciling information and (ii) discuss, in management's discussion and analysis of financial condition, any aspects of the differences between EU GAAP, IFRS and US GAAP not otherwise discussed in the reconciliation that the registrant believes are necessary for an understanding of the financial statements as a whole.

For more detailed information on the amendments to Form 20-F and the related disclosure requirements, please see our previously distributed memorandum titled "SEC Relaxes Requirements for First Time Adopters of International Reporting Standards" (May 2005) and the SEC's April 12, 2005 adopting release titled "First-time Application of International Financial Reporting Standards."⁵

New Disclosure Requirements Relating to Audit Committees

Rule 10A-3 of the Exchange Act sets forth the audit committee requirements adopted pursuant to Sarbanes-Oxley, and requires that each of the national securities exchanges in the United States adopt rules prohibiting the initial or continued listing of any security of a registrant not in compliance with these standards. The corresponding rules of the relevant securities exchanges were required to become operative for foreign private issuers on July 31, 2005. Below is a brief outline of the new disclosure requirements related to the audit committee requirements affecting the 2005 Annual Report:

- **Disclosure as to reliance on any exemptions from the independence requirement for audit committee members.** Under the Sarbanes-Oxley-mandated audit committee requirements, foreign private issuers with securities listed on a national securities exchange in the United States or traded on Nasdaq are required to have an audit committee comprised entirely of "independent" directors.⁶ Certain exemptions

⁵ See SEC Release Nos. 33-8567; 34-51535 (April 12, 2005) available at <http://www.sec.gov/rules/final/33-8567.pdf>.

⁶ Each registrant should refer to both the SEC's definition of "independence" and to the definition provided under the rules of the relevant securities exchange or Nasdaq as applicable to such registrant.

from this requirement are available, including some exemptions available exclusively to foreign private issuers (all of which are set forth in full in Rule 10A-3(b)(1)(iv) of the Exchange Act); however, the registrant must disclose in its 2005 Annual Report if it is relying on any of these exemptions and, if so, whether such reliance will materially affect the audit committee's ability to act independently. The exemptions available exclusively to foreign private issuers permit the following members to serve on an audit committee even though they may not qualify as "independent":

- an employee of a foreign private issuer who is not an executive officer of the foreign private issuer if the employee is elected or named to the board of directors or audit committee pursuant to (i) the registrant's governing law or documents, (ii) an employee collective bargaining or similar agreement or (iii) other home country legal or listing requirements.
- a member who is an affiliate of the foreign private issuer or a representative of such an affiliate if such member (i) has only observer status on, and is not a voting member or the chair of, the audit committee and (ii) neither the member nor the affiliate is an executive officer of the foreign private issuer.
- a member that (i) is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer and (ii) is not an executive officer of the foreign private issuer.

■ **Statement as to independence of audit committee financial expert.** In addition to disclosing whether a registrant has at least one audit committee financial expert serving

on its audit committee (and if not, why not), revised Item 16A of Form 20-F requires that the Annual Report include a statement as to whether the named audit committee financial expert is "independent" of management, as defined by the applicable securities exchange or Nasdaq rules. If the registrant's securities are not listed on a U.S. securities exchange or traded on Nasdaq, it may choose to use the definition of "independent" as set forth in the rules of a U.S. exchange or Nasdaq.

New check boxes on cover page of Form 20-F with respect to registrant's status

The securities offering reforms, which became effective on December 1, 2005, modernized a number of major aspects of the regulation of securities offerings under the Securities Act of 1933, as amended (the "Securities Act"). Broadly stated, the reforms relate to communications regarding registered securities offerings, disclosure liability under Sections 12(a)(2) and 17(a)(2) of the Securities Act, the offering and registration process under the Securities Act, prospectus delivery requirements and enhanced disclosure in Exchange Act reports.⁷ The applicability of several new regulations relating to the SEC's securities offering reforms depends on the registrant's status as a "well-known seasoned issuer" as defined in Rule 405 of the Securities Act or as a "large accelerated filer," an "accelerated filer" or a "non-accelerated filer," each as defined in Rule 12b-2 of the Exchange Act. Rule 12b-2 of the Exchange Act defines accelerated filers as having a public float of at least \$75 million but less than \$700 million, large accelerated filers as having a public float of \$700 million or more and non-accelerated filers as having a public float of less than \$75 million.

The cover page of Form 20-F now contains check boxes relating to the securities offering reforms and the new disclosure requirements

⁷ For information regarding these reforms, including how these classifications may affect you, please see the White & Case memorandum titled "SEC Adopts Far-Reaching Changes to the Registered Offering Process" (September 2005).

⁸ The SEC adopted new rules affecting shell companies which became effective on November 7, 2005. See SEC Release Nos. 33-8587; 34-52038 (July 15, 2005) available at <http://www.sec.gov/rules/final/33-8587.pdf>.

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for shell companies.⁸ Registrants must check the appropriate box to indicate whether they are (i) a well-known seasoned issuer, (ii) not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act, (iii) a large accelerated filer, an accelerated filer or a non-accelerated filer or (iv) a shell company. These check boxes, which have also been added to Form 10-K for U.S. domestic registrants, will present the registrant's status clearly to the SEC and market participants.

Disclosure of material unresolved SEC staff comments⁹

The SEC has added new Item 4A to Form 20-F, which requires that accelerated filers, large accelerated filers and well-known seasoned issuers that have received written comments from the SEC staff regarding periodic reports under the Exchange Act more than 180 days before the end of the fiscal year to which the Annual Report relates disclose in their Annual Report the substance of such comments if (i) the registrant believes such comments are material and (ii) such comments remain unresolved as of the date of the filing of the Annual Report. The SEC has indicated that registrants may also present in Item 4A their position with respect to such unresolved comments.¹⁰

Nasdaq rule permitting foreign private issuers to follow certain home country corporate governance practices

Under amended Nasdaq rules that went into effect on March 3, 2005, foreign private issuers with securities traded on Nasdaq are permitted to follow certain home country corporate governance practices in lieu of certain Nasdaq corporate governance requirements, even if such home country practices are not consistent with Nasdaq requirements. Prior to this amendment, registrants were required to request from Nasdaq an exemption from the corporate governance standards set forth in Rule 4350 of Nasdaq's Marketplace Rules ("Rule 4350") by establishing that such standards were contrary to accepted home country practices.

As a result of the amendment, foreign private issuers taking advantage of this accommodation are no longer required to request an exemption from Nasdaq, but instead must disclose in their Annual Report each requirement of Rule 4350 with which they are not complying and describe the alternative home country practice they do follow. In addition, foreign private issuers that elect to rely on the rule will have to submit a written statement to Nasdaq from independent counsel in their home country certifying that such corporate governance practices are not prohibited by the home country's laws. The certification is required at the time the registrant seeks to adopt its first non-compliant practice.

Notwithstanding the above, the amended rule does not excuse foreign private issuers from complying with certain sections of Rule 4350 pertaining to, among other things, disclosure of going concern qualifications contained in audit opinions, the obligation to notify Nasdaq of an executive officer's material non-compliance with the provisions of Rule 4350, and certain audit committee independence requirements.

**Part II: Disclosure Requirements
Applicable to 2006 and 2007
Annual Reports**

Section 404 of Sarbanes-Oxley requires that the SEC prescribe rules requiring each registrant's Annual Report to contain an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and containing an assessment of the effectiveness of the internal control structure and procedures of the registrant for financial reporting. Pursuant thereto, the Commission adopted, among other rules, new Item 15 to Form 20-F.

⁹ See SEC Release Nos. 33-8644; 34-52989 (December 21, 2005) available at <http://www.sec.gov/rules/final/33-8644.pdf>; see also SEC Release Nos. 33-8591; 34-52056 (July 19, 2005) available at <http://www.sec.gov/rules/final/33-8591.pdf>.

¹⁰ Please note that the SEC has begun publicly releasing its comment letters and registrant response letters relating to filings made after August 1, 2004, that are selected for review.

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Instead of introducing this section in 2005 as it had planned, in March 2005, the SEC granted foreign private issuers a one-year extension for compliance with Section 404 of Sarbanes-Oxley. Below is a brief outline of the disclosure requirements under Sarbanes-Oxley that will affect either the 2006 Annual Report or the 2007 Annual Report.

- **Report on management's internal control over financial reporting.** Section 404 of Sarbanes-Oxley requires that the Annual Report include a management report on internal control over financial reporting containing, among other things, a statement regarding management's responsibility and an assessment of internal control. In addition, a related attestation from the registrant's independent auditors must be included.

A foreign private issuer that is an accelerated filer or a large accelerated filer must comply with the disclosure requirements of Section 404 in its Annual Report for fiscal years ending on or after July 15, 2006. A foreign private issuer that is not an accelerated filer must comply with the disclosure requirements of Section 404 with respect to the Annual Report for its first fiscal year ending on or after July 15, 2007.

Although the Section 404 requirements will not apply to the 2005 Annual Report, the disclosure in the 2005 Annual Report may be affected by the work that registrants have done or will do prior to the filing. Therefore, in preparing the 2005 Annual Report, registrants should review where they are in their internal controls assessment process and determine the impact, if any, on their 2005 Annual Report disclosure.

- **Section 302 certification covering internal control over financial reporting.** In addition to the currently applicable Section 302 certification requirements, CEOs and CFOs will be required to certify, beginning with

the 2006 Annual Report for accelerated filers and large accelerated filers and the 2007 Annual Report for non-accelerated filers, that they are responsible for internal controls over financial reporting and have designed a system of internal controls over financial reporting to provide reasonable assurance that the financial statements are reliable and prepared in accordance with generally accepted accounting principles.

An updated form of the Section 302 certification is attached as Annex A hereto, which includes the additional certification language required by Section 404 (underlined for your reference). The underlined language in Annex A is not necessary for 2005 Annual Reports. However, the underlined language will be necessary for future Annual Reports commencing in 2006 or 2007, depending on when a foreign private issuer will be subject to Section 404.

We would be pleased to discuss any questions you may have regarding the preparation of your Annual Report. Please contact the attorney at White & Case with whom you regularly discuss securities matters or any of the attorneys identified at the end of this memorandum.

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CERTIFICATIONS*

Annex A

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20-F of [identify company];
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:**
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.**
 - (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: _____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the company. See Rules 13a-14(a) and 15d-14(a).

** Please note that the underlined text is not required in certifications with respect to 2005 Annual Reports, but will be required for future Annual Reports commencing in 2006 or 2007, depending on when a foreign private issuer will be subject to Section 404 of Sarbanes-Oxley.

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