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SECRETARIAL
AUDIT

CS Amit gupta

Member, NIRC – ICSI

Practicing Company Secretary, Lucknow

Scope of the Presentation





Fraud Reporting

Duty to Report Fraud

Section 143(12)

- Notwithstanding anything contained in this section, if an auditor of a company, **in the course of the performance of his duties** as auditor, has **reason to believe** that an offence involving fraud is being or has been committed **against the company by officers or employees of the company**, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

Duty to Report Fraud

Rule 13

- An offence of fraud expected to involve individually an amount of Rs. one crore or more to be reported to CG
- In other cases reporting to Audit Committee/Board and Company to make disclosure in Board Report

Reporting to Central Government

Immediately (not later than 2 days) send Report to Board/Audit Committee seeking reply with 45 days

Auditor to send report with Board replies in ADT 4 with in 15 days of receipt of Reply. If Board does not reply, he shall forward report stating such fact

ADT 4 to be sent to Secretary, MCA in sealed cover by RPAD/Speed post, followed by an email

Reporting to Audit Committee/Board

Immediately (not later than 2 days) send Report to Board/Audit Committee specifying: nature of fraud with description, amount involved & parties involved,

Board report to include the above facts along with remedial action taken

No form prescribed for reporting to Board/Audit Committee

Issues involved

A

- Fraud vs. non compliance

B

- Which frauds covered? If only frauds committed against the Company by an officer/employees? What about frauds committed by the Company? What about frauds committed against the Company by third parties?

C

- If only frauds discovered during the course of Audit required to be reported? What about frauds discovered by management, other Auditors, third parties?

D

- When to be Reported - Based on Suspicion - Reason to Believe –Knowledge – or on Determination of Offence

E

- If corruption, bribery, money laundering etc. covered in scope of fraud reporting?

Issues involved

F

- Frauds relating to period other than reporting period.

B

- Concept of materiality, if material?

C

- Reporting of fraud in Secretarial Audit Report

D


- Frauds with reference to Secretarial Audit

E

- Identification techniques

Fraud vs Non Compliance

Fraud in relation to affairs of a company or any body corporate, includes



any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner

with intent to deceive, to gain undue advantage from, or to injure the interests of

the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss

For Fraud reporting – only frauds committed by officers/ employees are covered

Fraud vs Non Compliance

Non compliance may also be a fraud

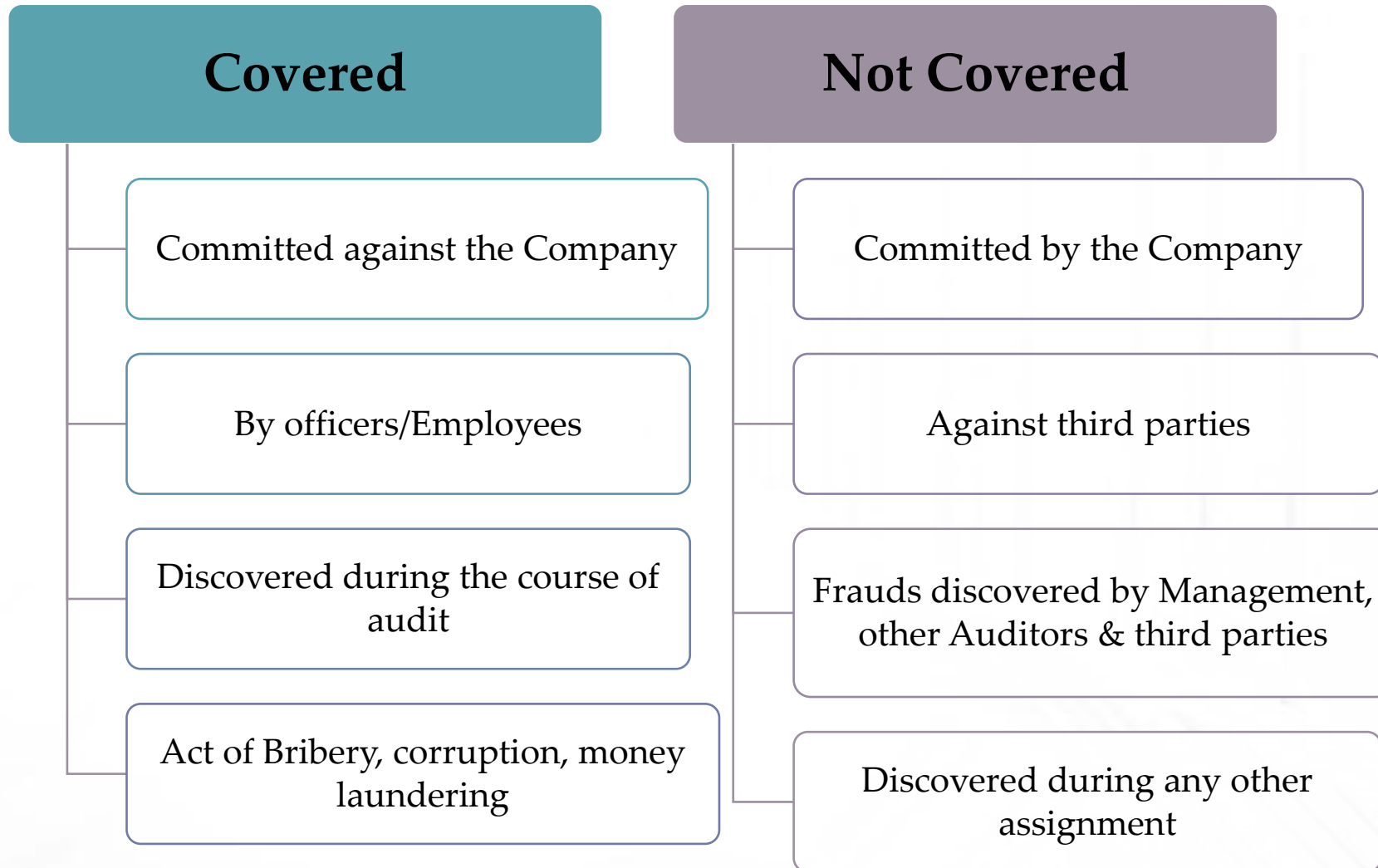
Non compliance

with intent to deceive, to gain undue advantage from, or

to injure the interests of the company or its shareholders or its creditors or any other person

Fraud

Frauds Covered



Frauds Covered

Few Examples

Covered

An employee engaged in business parallel to the Company, diversion of business/sales proceeds to other company, usage of resources of Company for his personal business.

Transfer of funds by directors to other group companies by way of loan/investments with intent to siphon funds

Misstatement in prospectus/offer document

Fraud committed by the Company by inducing public to invest in the scheme of the Company, shall be considered against the Company, hence covered

Not Covered

A third party investing Black money in the Company as a Share capital

A third party investing money in the share capital of the Company, with fake identity.

A third party playing fraud against the Company by taking money by fraud

Frauds Covered

Few Examples

Covered

Issue of duplicate share certificate with intent to defraud

Destruction of records

Submission of false statement

Fraudulent conduct of business of company with intent to defraud creditors of the company or any other persons or for any fraudulent purpose

Making a false statement with intent to defraud

Not Covered

Simple/inadvertent delay/non compliance in filing of any form/document return etc. without any intent to injure

Concept of Materiality

Concept of materiality well covered in the Act/rules

All frauds with expected involvement of Rs. 1 cr or more to be reported to Central Government

All other frauds to be reported to the Audit Committee/Board with adequate disclosure in Board Report

Reporting in Audit Report

**If fraud detected
should be reported in
Audit report ??**

**Though MR3 format no
where specifically requires
for the same, however in
comments/qualification
Para fraud detected should
be highlighted**

Reporting in Audit report

Draft
Para

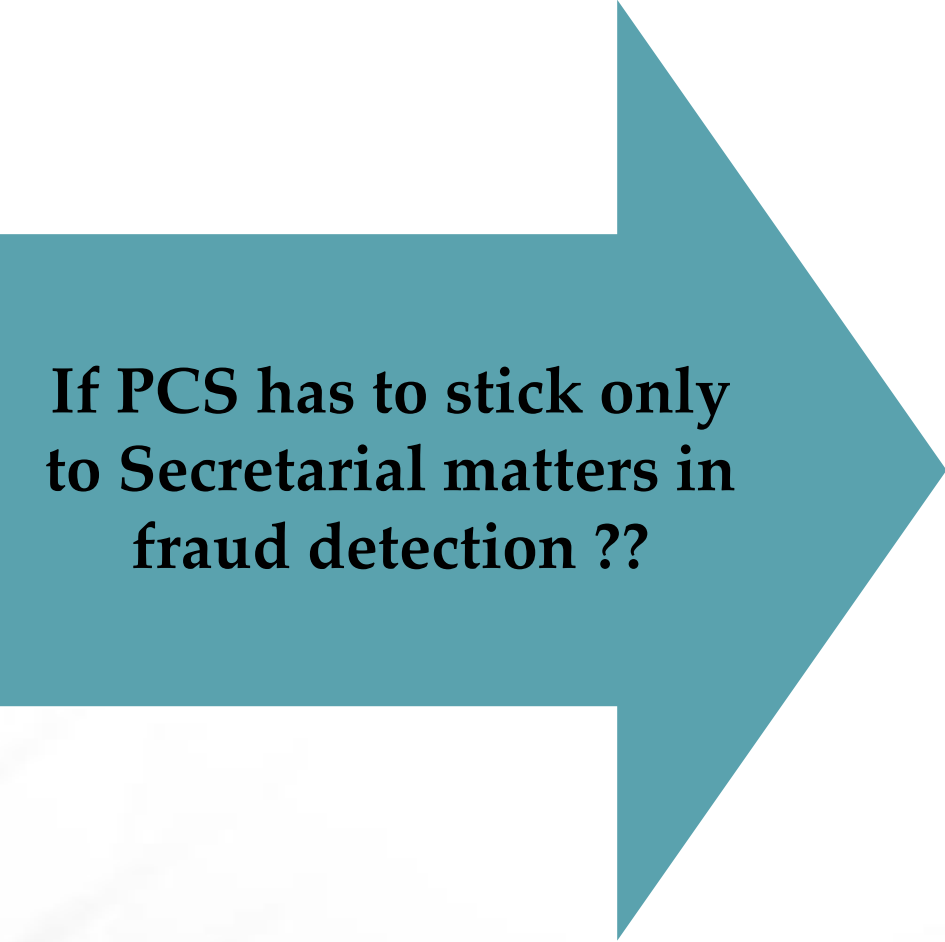
- During the period under review the Company has complied with the provisions of the Act, rules, regulations, guidelines, standards etc. mentioned above, except to the extent as mentioned below:
- **Suspected fraud committed by management of the Company by issuance of duplicate share certificate worth more than one crore, which has been reported separately to the Central Government in terms of the provisions of section 143(12) of the Act.**

Reporting in Audit report

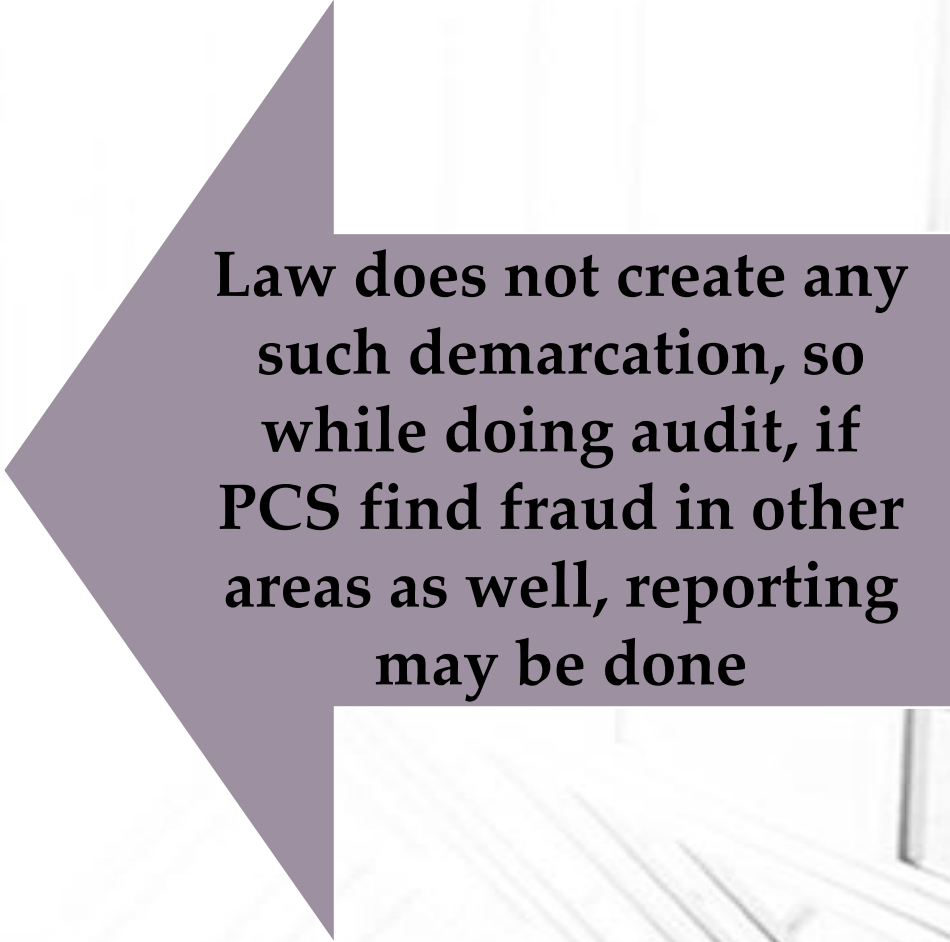
Draft Para

- Suspected fraud committed by management of the Company by way of misstatement regarding the capital buildup in the prospectus issued by the Company for raising INR 50 crores, which has been reported separately to the Central Government in terms of the provisions of section 143(12) of the Act.
- Suspected fraud committed by management of the Company by diversion of funds of more than INR 5 crores, out of funds raised through public issue, which has been reported separately to the Central Government in terms of the provisions of section 143(12) of the Act.

Frauds with reference to Secretarial Audit



If PCS has to stick only to Secretarial matters in fraud detection ??



Law does not create any such demarcation, so while doing audit, if PCS find fraud in other areas as well, reporting may be done

When to Report

Reason to believe

Sufficient information or convincing evidence to advance beyond suspicion that it is possible someone is committing or has committed a fraud.

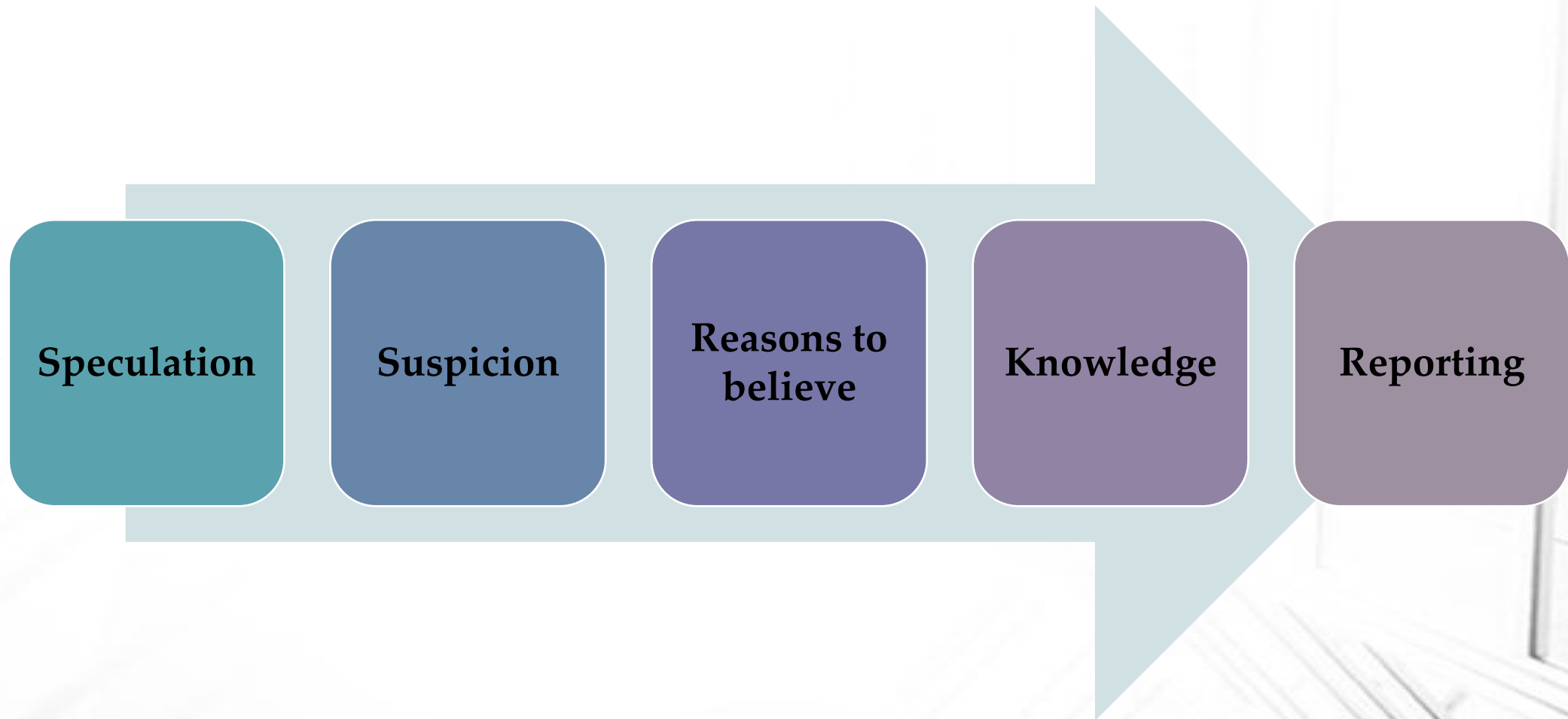
Knowledge

The auditor has sufficient reason to believe that a fraud has been or is being committed on the company by its officers or employees. This implies that there exists a fraud.

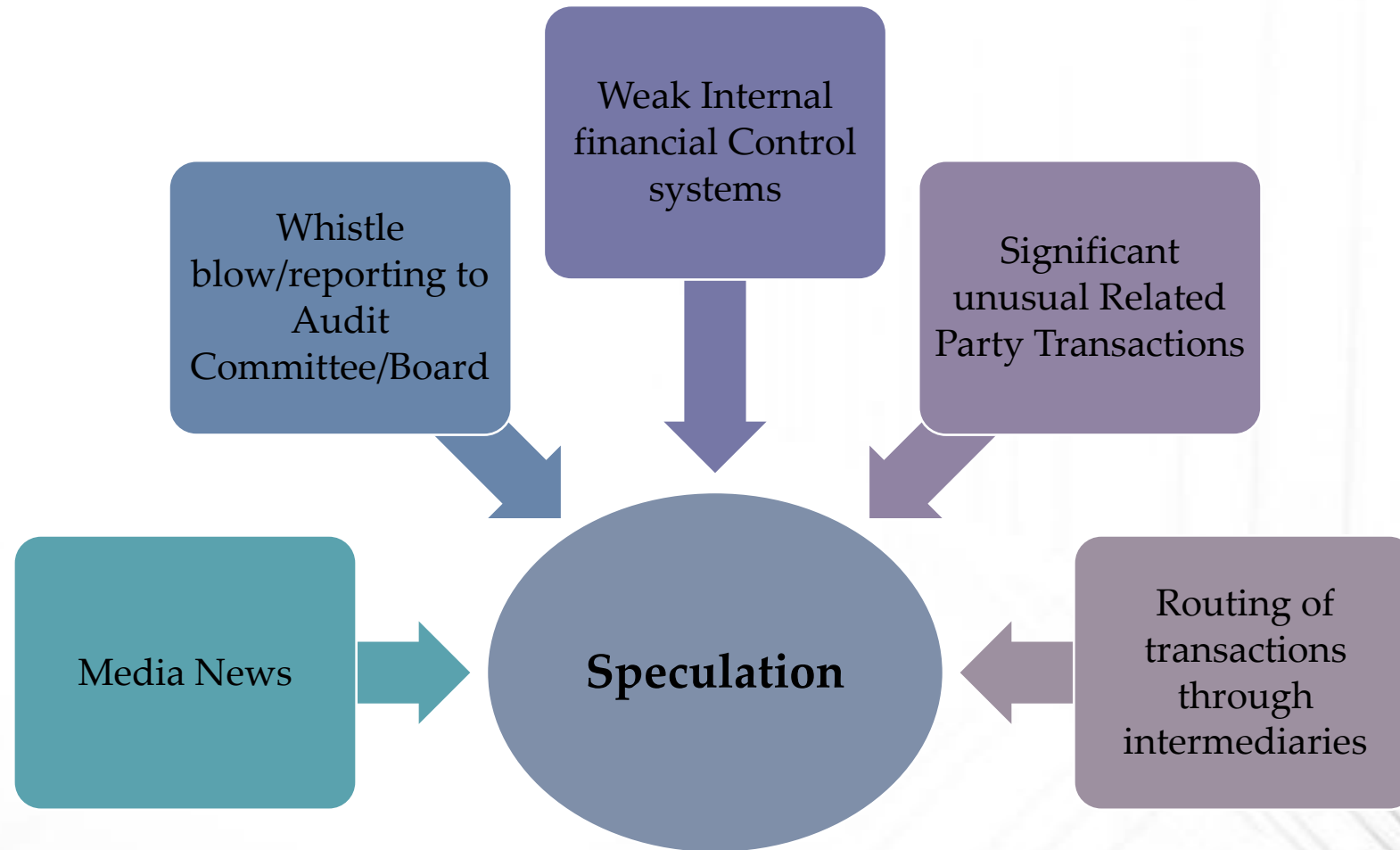
Suspicion

'Suspicion' is a state of mind more definite than speculation, but falls short of knowledge based on evidence. It must be based on some evidence, even if that evidence is tentative – simple speculation that a person may be engaged in fraud is not sufficient grounds to form a suspicion. Suspicion is a slight opinion but without sufficient evidence.

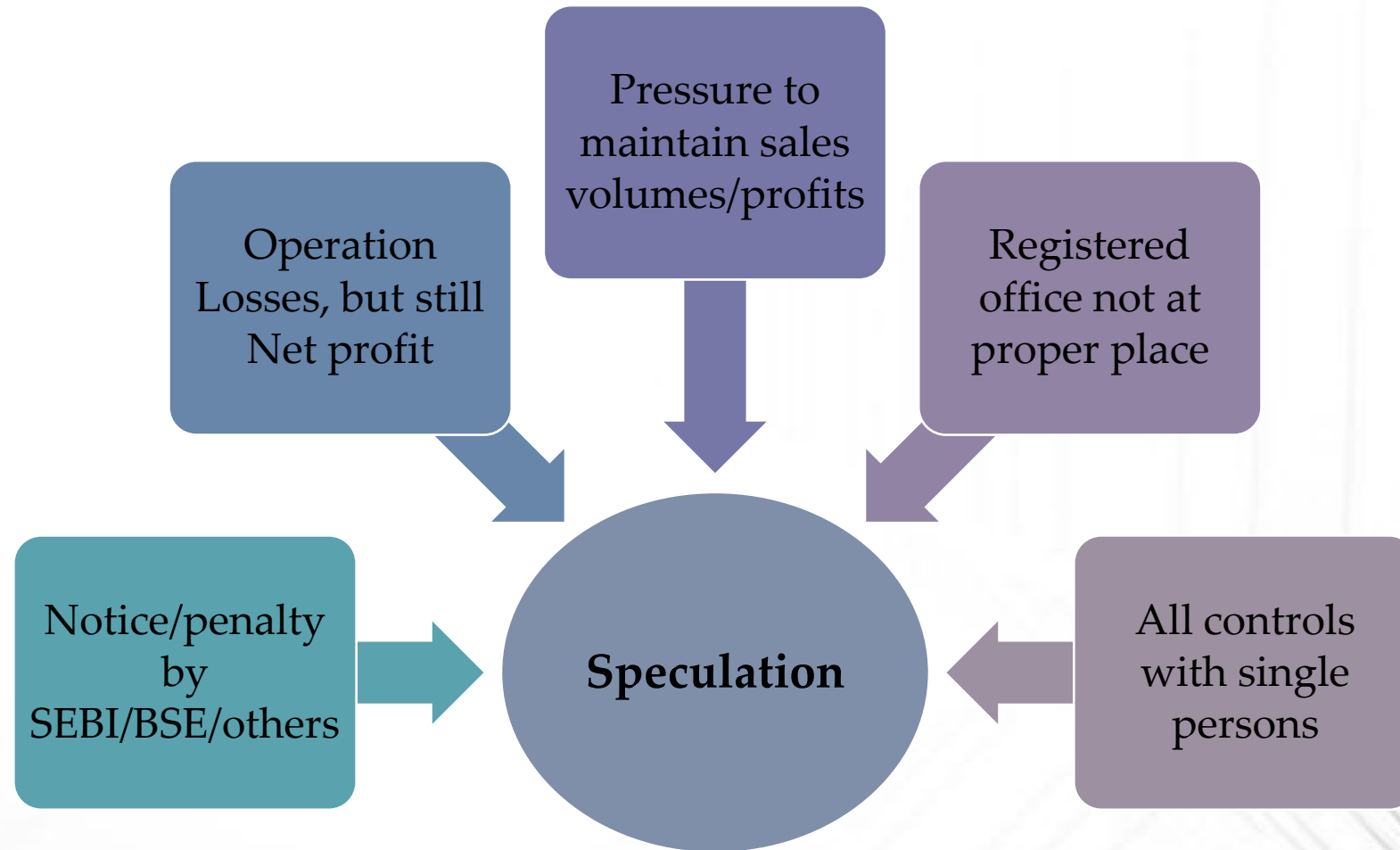
Detection Process



Detection Process



Detection Process



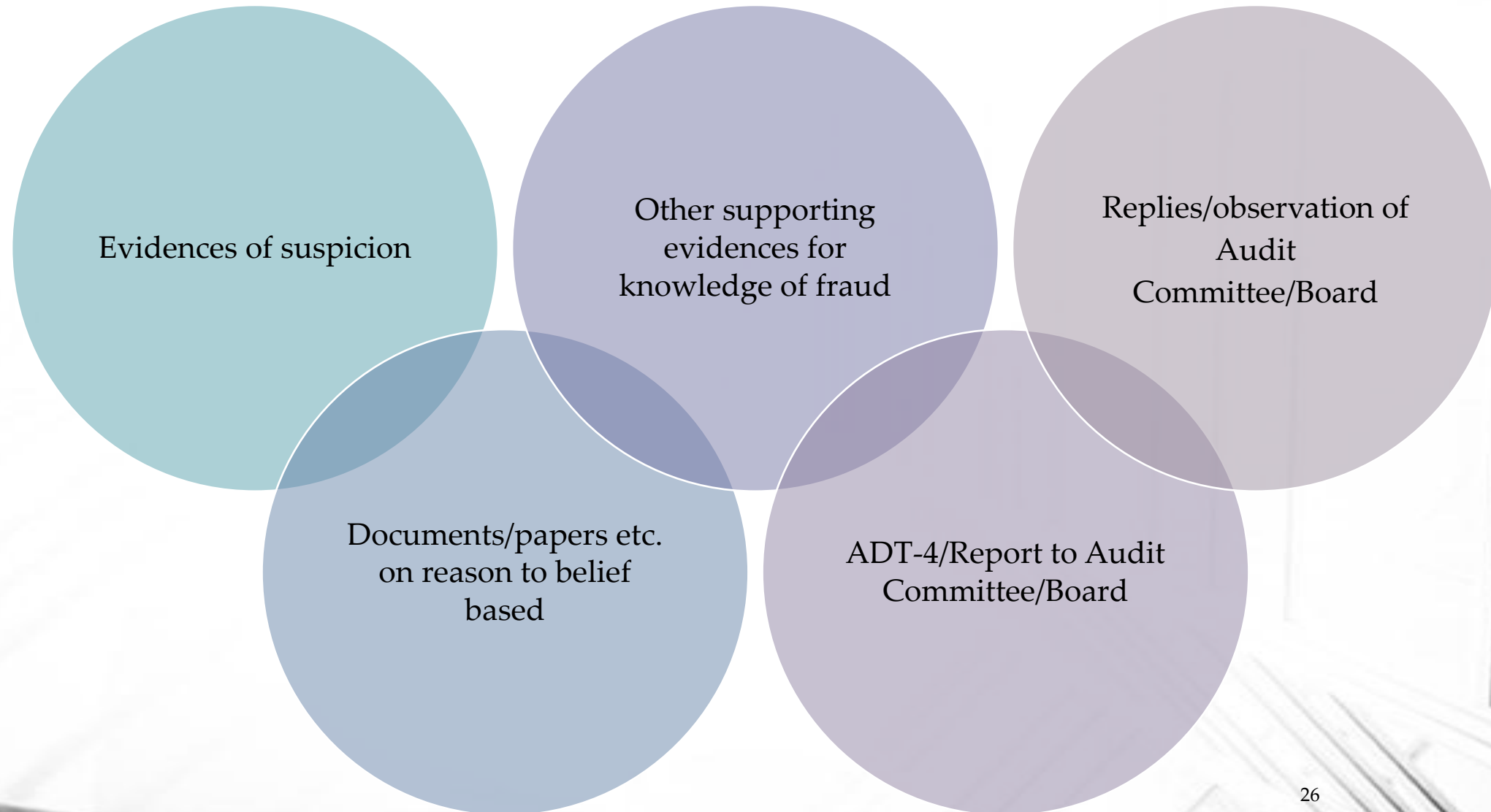
Risk for Secretarial Auditor

Section	Action	Penalty
143(15)	If Secretarial Auditor fails to report fraud to Central Government	Fine – 1 lacs to 25 lacs
448	Make a false statement in Secretarial Audit Report. (offence – cognizable, bail only after giving opportunity to public prosecutor and court is satisfied that he is not guilty and not likely to commit offence during bail)	Imprisonment - 6 months to 10 years and fine - 1 time to 3 times of fraud involved. Where fraud involves public interest, term of imprisonment shall not be less than three years

General Introduction

Section	Action	Penalty
245(1)(g)	Class Action Suits	As may be determined by tribunal
Schedule II (Part –I) of CS Act, 1980	“discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force.”	Removal Fine can go up to Rs.5 Lakhs

Contents of Record File



*Thank
you*

