

A series of horizontal arrows in various colors (yellow, orange, purple, green, red, grey) pointing to the right, with a large purple arrowhead pointing towards the text.

# ***Fraud Reporting***

***The Companies Act 2013: The dawn of a new era***

***By***

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# Recent news on Fraud & Corruption in India

**Serious Fraud Investigation Office files prosecutions against 8 companies**  
Statutory recognized agency does not register cases against individuals but only takes up investigations  
Press Trust of India | New Delhi February 5, 2014 Last Updated at 19:24 IST

**Sebi gets new software tools for fraud detection, probes**  
New tools will help the capital markets watchdog in keeping a close watch on possible manipulative activities in the stock markets  
Press Trust of India | Mumbai April 6, 2014 Last Updated at 12:54 IST

**Dealing with company deposit frauds**  
Recovery options for retail investors are few; all they can do is put pressure on the firm through legal channels  
Neha Pandey Desai | Mumbai February 20, 2014 Last Updated at 22:01 IST

**Irda asks insurers to warn customers about fraud**  
Regulator has asked all insurers to highlight warning messages in their product advertisements on the same  
BS Reporter | Mumbai January 29, 2014 Last Updated at 00:24 IST

**CBI launches helpline against officials demanding bribe**  
Press Trust of India | Bhopal June 5, 2014 Last Updated at 14:45 IST

**ICAI to introduce with guidance on frauds**  
Projects have already been taken up to develop appropriate guidance for auditors in this regard  
Press Trust of India | New Delhi February 12, 2014 Last Updated at 19:53 IST

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# Recent news on Fraud & Corruption in India

## RBI does not give away money, Rajan warns against fraud

Will use social media to address fraud, he says

Katya B Naidu | Mumbai February 12, 2014 Last Updated at 14:21 IST

## CBI lens on port contractors after loading fee dispute

PMO has asked the shipping ministry for details of appointments of stevedores - those who move goods on and off ships - and the fees charged by them at the major ports

Ruchika Chibrevanshi | New Delhi July 3, 2014 Last Updated at 00:41 IST

## New software to curb online banking frauds

Gyrus takes extra steps to prevent malware from sending spam emails and instant messages

IANIS | New York February 26, 2014 Last Updated at 11:22 IST

## Fraud, bribery, corruption remain key challenges for India Inc

Press Trust of India | New Delhi June 11, 2014 Last Updated at 17:06 IST

## Labour ministry devising transparent labour law inspection system

By Wipro Group | 12 Jun 2014 10:34:57

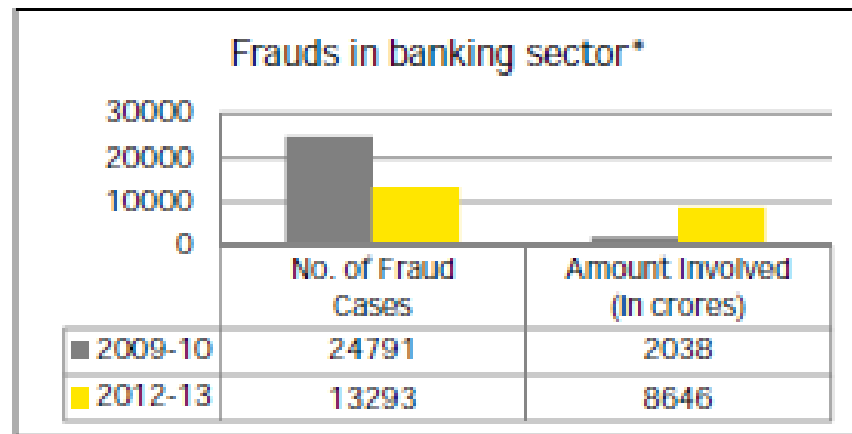
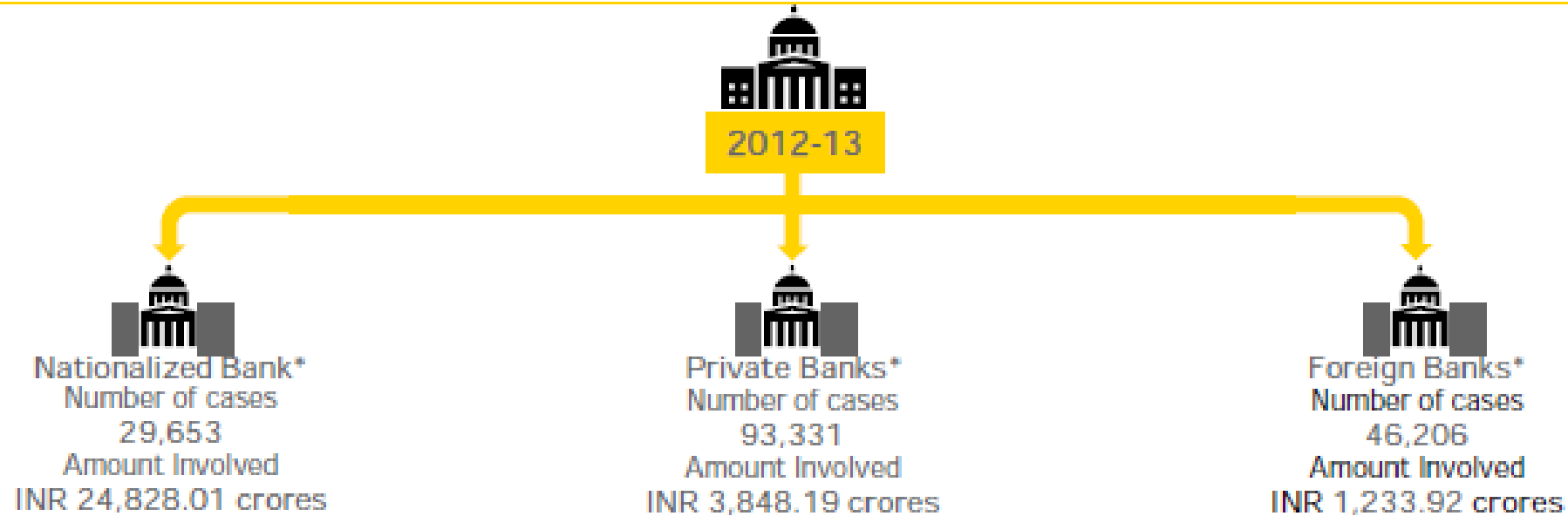
## Industry players welcome proposal to amend Factories Act

## Major sops coming for auto sector in the Budget

## Automobile Industry Welcomes Extension in Excise Duty Cut

By IANS | Published: 27th June 2014 10:56 AM Last Updated: 27th June 2014 12:17 PM

# Frauds in Banking Sector

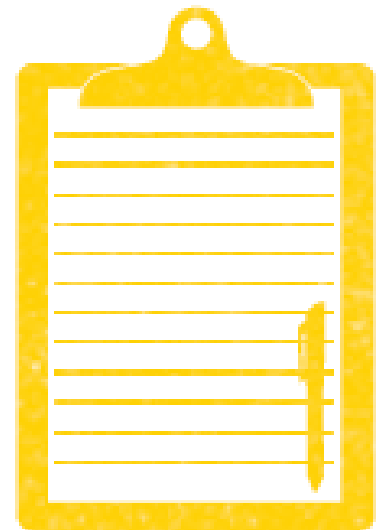


Over a period of four years although the number of frauds have decreased, amount involved (in crs) has increased by over 300%.

# *Companies Act 2013 – Fraud Reporting*

## *Agenda*

- What is fraud?
- Punishment for Fraud under the 2013 Act
- Erstwhile Reporting Requirement of an auditor relating to fraud
- Reporting on fraud under the 2013 Act
- View - Reporting on fraud u/s 143(12) of the 2013 Act
- A Quick recap
- View Checks



# Companies Act 2013 – Fraud Reporting



## *What is fraud – Definition under Section 447 of the act ?*

As per the Act- "fraud" in relation to affairs of a company or any body corporate, includes:

- a. any act;
  - b. omission;
  - c. concealment of any fact; or
  - d. abuse of position committed by any person or any other person with connivance of another in any manner.-
    - i. *with the intent to deceive,*
    - ii. *to gain undue advantage from, or*
    - iii. *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

# *Companies Act 2013 – Fraud Reporting*



*What is fraud?.....*

***Meaning of wrongful gain or wrongful loss:***

- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled

# *Companies Act 2013 – Fraud Reporting*



## *Punishment for fraud in the 2013 Act:*

- A person found guilty of fraud-
  - punishable with **imprisonment** for a term between 6 m- 10 yrs; and
  - liable to **fine** at least for the amount involved in the fraud, extendable upto 3 times the amount involved
- The 2013 Act has provided punishment for fraud as provided u/s 447 in around 20 secs of the Act e.g. u/s 7(5), 7(6), 8(11), 34,36,38(1), 140 (5) etc. for directors, KMPs, auditors and/or officers of company
- Thus, the new Act goes beyond professional liability for fraud and extends to personal liability of the concerned person



# *Companies Act 2013 – Fraud Reporting*

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## *What bothers Secretarial Auditor?*

- Duty is casted upon the Secretarial Auditor to report fraud where ***during the course of his audit*** he has reason to believe that an offence involving fraud is being committed or has been committed against the Company by its officers/ employees. [S. 143 (12 & 14)].
- The manner of reporting is prescribed under Rule 13 of the Companies (Audit and Auditors) Rules, 2014.

# *Requirement of Secretarial Audit*

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*Section 204 read with rules provides that :*

- every listed company and
- any other public company having
  - *a paid up capital of Rs. 50 crores or more or*
  - *turn over of Rs. 250 crores or more*
- shall annex with the Board's report, a secretarial audit report given by the Company Secretary in practice, in such form as may be prescribed.
- The relevant rule prescribes the form of the report in MR-3.

# *Audit Report in relation to Secretarial Audit*



*A perusal of the secretarial audit report as prescribed by the relevant rule indicates that the secretarial auditor is required to state that :*

- Audit was conducted in a manner that provided reasonable basis for evaluating the corporate conducts / statutory compliances and expressing his opinion thereon.
- Based on verifications of books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the company and its officers, agents and authorized representative during the conduct of secretarial audit, the company during the period covered under audit has complied with the statutory provisions listed in the report and that the company has proper Board processes and compliance-mechanism in place to the extent, in the manner and subject to reporting made hereinafter.

# *Audit Report in relation to Secretarial Audit*



## *The secretarial auditor is required to state that*

The has examined the books, papers, minutes books, forms and returns filed and other records maintained by the company for the relevant financial year according to the provisions of the Act and other specified Act such as

- Companies Act 2013
- Depository Act 1996,
- Securities Contracts (Regulation) Act, 1956,
- Foreign Exchange Management Act 1999, (FDI, Investment and External Commercial Borrowings)
- rules, regulations, bye laws under these Act specified regulations and guidelines prescribed under the Securities and Exchange Board of India Act 1992. These include:
  - SEBI (Substantial Acquisition of Shares & Takeovers) Regulations 2011
  - SEBI (Prohibition of Insider Trading) Regulation 1992

# *Audit Report in relation to Secretarial Audit*

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- b) SEBI (Capital and Disclosure Requirements) Regulations 2009
- c) SEBI (Employee Stock Option Scheme and Employee Purchase Scheme) Guidelines, 1999.
- d) SEBI (Issue and Listing of Debt Securities) Regulations 2008
- e) SEBI (Registrar to an Issue and Share Transfer Agents) Regulations 1993
- f) SEBI (Delisting of Equity Shares) Regulations 2009 and
- g) SEBI (Buy bank of Securities) Regulations 1998
- h) Other Laws applicable to the Company

# *Audit Report in relation to Secretarial Audit...*

A decorative graphic consisting of two horizontal lines. The top line is olive green and ends in a large olive green arrowhead pointing to the right. The bottom line is red and ends in a smaller red arrowhead pointing to the right.

*The secretarial auditor is also required to state that*

- he has examined the compliance with the applicable clauses of the Secretarial Standards issued by the Institute of Company Secretaries of India and
- the listing agreement entered into by the company with the stock
  - exchanges, if applicable.

# *Audit Report in relation to Secretarial Audit..*



*The secretarial auditor is also required to state that*

- Constitution of the Board of Directors of the company has a proper balance of executive directors, non-executive directors and independent directors and that changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.
- Adequate notice is given to the directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent seven days in advance and a system exists for seeking and obtaining further information and classification on the agenda items before the meeting and for meaningful participation at the meeting.
- There exist adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

# *Audit Report in relation to Secretarial Audit :*



The Institute of Company Secretaries has issued FAQs on various provisions of the Act and one of the FAQ dealing with this aspect explains the requirement as to other laws to be looked into by the Secretarial Auditor.

- The Council of the ICSI at its 226th meeting held on November 21, 2014 decided on the Scope of Secretarial Audit as regards “point (vi) .....( other laws as may be applicable specifically to the company)”, is discussed in subsequent slides:



# FAQ's



## *Query No. 9*

*What is the coverage of 'Point (vi) ..... (other laws as may be applicable specifically to the company)' in Form MR-3 ?*

### *Response:*

Reporting on compliance of Other laws as may be applicable specifically to the company“ which shall include all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry;

- For a company in petroleum sector - all laws applicable to petroleum industry;
- Similarly, for companies in pharmaceutical sector, cement industry etc specific law would need to be checked.

# FAQ's

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## *Query No. 10*

*Whether financial laws need to be examined while conducting secretarial audit?*

## *Response*

In case of financial laws like tax laws and Customs Act etc., Secretarial Auditor may rely on the Reports given by Statutory Auditors or other designated professionals.

# *Principles governing an Audit*



- Engagement letter
- Integrity, objectivity and independence
- Confidentiality
- Work performed by others
- Planning
- Audit Evidence
- Documentation
- Risk Assessment
- Skills and competence
- Confirmation procedure from the Company's legal counsel
- Representation letter

# *Companies Act 2013 – Fraud Reporting*



## *Reporting on fraud, u/s 143(12) of the 2013 Act*

### **Persons covered for fraud reporting**

- statutory auditor of a co
- cost accountant, conducting cost audit u/s 148
- **company secretary, conducting secretarial audit u/s 204**
- branch auditor appointed u/s 139

### **Persons not covered for fraud reporting**

- other professionals, rendering other services to the co (e.g. tax auditor, sales tax or VAT auditors)
- internal auditors covered u/s 138

**Note:** This sec includes fraud by officers or employees of the co and does not include fraud by third parties such as vendors and customers.

# Companies Act 2013 – Fraud Reporting



*Erstwhile reporting requirements of an auditor relating to fraud under 1956 act:*

## **Reporting on Fraud u/s 227 (4A) of the 1956 Act, CARO, 2003 (as amended):**

- Clause 4(xxi) of CARO requires the auditor to report if any fraud **on or by the co** has been **noticed or reported** during the yr. If yes, the nature and the amount involved to be indicated.
- this clause does not require the auditor to discover these frauds; however, the scope of auditor's inquiry under this clause is restricted to frauds 'noticed or reported' during the yr.
- The words "noticed or reported" indicates that the co's management should have the knowledge on these frauds that occurred during the period covered by the auditor's report.
- though fraud is a broad legal concept, the auditor is concerned with fraudulent acts that cause a material misstatement in the FS.
- Two types of intentional misstatements are relevant to the auditor's consideration of fraud:
  - misstatements resulting from fraudulent financial reporting; and
  - misstatements resulting from misappropriation of assets.

# *Companies Act 2013 – Fraud Reporting*



## *Reporting on fraud under the 2013 Act*

### **Responsibility of the Directors and Management**

- The Board Report shall state that the directors had taken due care for preventing and detecting fraud and other irregularities;
- IDs shall also report concerns about suspected fraud

### **Responsibility of AC**

- As per listing agreement, the AC is responsible for reviewing the findings of an internal auditor into suspected fraud or irregularity of a material nature and reporting to the board

### **Clause 49**

- Under the CEO/CFO certification, to mention to the auditors and the AC on **the instances of significant fraud** and those involved having a significant role in the company's IFC over financial reporting
- Listing agreement also makes the directors and the AC overly responsible for the fraud related matters

# Companies Act 2013 – Fraud Reporting



## Reporting on fraud under the 2013 Act

### Responsibility of the Auditor – Rule 13 of the Companies (Audit and Auditors) Rules 2014

- Auditors to report about the fraud to the CG if sufficient evidence, within 60 days
- Initial report to be given to Board/AC for their comments. Time limit for responses set at 45 days. Within 15 days of receipt of comments or expiry of 45 days (in case comments not received), report to be sent to the CG
- Reporting of fraud by the auditor shall also extend to concerned branch auditor
- Responsibility to report fraud applies equally to secretarial and cost auditors.

**Punishment for auditor** – In case auditor fails to report fraud to CG within 60 days Auditor, cost accountant or company secretary shall be punishable with fine (Rs. one lakh- twenty-five lakh)

### Key take away points

- The term “Fraud” as defined under the 2013 Act is very wide and perhaps encompasses every act of omission or commission
- Further, there is no materiality limit set for reporting to the CG
- Reporting fraud by the officers or employees on the co is only required. However, the fraud committed by others on the co and frauds reported by the co on these or others is currently not required to be reported

# *Frauds concerning – Secretarial Auditor*



*It will be observed from the definition of fraud contained in the Explanation to section 447 of the Act, that a person shall be treated as guilty of an offence involving fraud under the Act, if the following is involved:*

- Furnishing false information or suppressing material fact in documents or declaration filed for incorporation of a company - section 7(5);
- Misstatements in prospectus – section 34;
- Fraudulent inducements to invest, making false promises, forecasts or statements – section 36(1);
- Presentation for acquisition of securities, or making multiple applications for acquiring securities section 38;
- Issue of duplicate shares with intent to defraud – section 46(5);



# *Frauds concerning – Secretarial Auditor*



- Transfer of shares with intent to defraud – section 56(7);
- Reduction of capital - concealing name of creditor or misrepresenting amount or nature of debt - section 66(10);
- Auditor acting in fraudulent manner or in fraud by or in relation to a company – section 140(5);
- Carrying on of business of Company for a fraudulent or unlawful purpose – section 206(4);
- Business of the company carried on with intent to defraud creditors, members or any other person or otherwise for fraudulent or unlawful purpose - Section 213;
- Furnishing false statement, mutilation, destruction of documents, falsification of documents during the course of inspection/inquiry/ investigation- Section 229;
- Fraudulent application for removal of name - section 251(1);
- In the course of winding-up it appears that business of the company has been carried with intent to defraud creditors or any other persons or for any fraudulent purpose – section 339(1); and
- False statement in any return, statement, prospectus or other document for purposes of any provision of the Act – section 448.

# *Serious Fraud Investigation Office (SFIO)*



- Act provides for establishment of Serious Fraud Investigation Office (SFIO) and till it is established under Section 211(1), the present SFIO established under administrative orders, referred to in the Proviso to section 211(1) shall be deemed to be SFIO for the purpose of Section 211.
- Central Government can assign investigation into affairs of any company to SFIO and if there is any offence under investigation by SFIO no other investigation authority including the State Police, can continue or commence investigation.
- Under the Companies Act, 2013, the SFIO has been given a statutory status and powers of investigation under the Code of Criminal Procedure, 1973 have been vested in SFIO sub section (17) of Section 212 makes a specific provision for sharing of any information or documents available with any other investigating authority or income-tax authorities with SFIO and likewise SFIO can share information or documents available with it, with any other investigating authority or income-tax authorities.

# *Serious Fraud Investigation Office (SFIO)*



- As per the provisions of section 212(6) of the Act, the above offences are cognizable offences and no person accused of any offence under above sections can be released on bail without giving opportunity to be heard to the Public Prosecutor.
- There is provision of establishment of Special Courts to try the offences under the Act and pending such establishment, the offences are to be tried by a Court of Session exercising jurisdiction over the area (*refer* Section 440 of the Act ).

# Companies Act 2013 – Fraud Reporting



## Views - Reporting on fraud, u/s 143(12) of the 2013 Act

### Auditor's responsibility for consideration of fraud

- Sec 143(12) requires an auditor to report on fraud if **in the course of performance of his duties as an auditor**, the auditor has reason to believe that an offence involving fraud is being or has been committed against the co by its officers or employees.
- The term, “**in the course of performance of his duties as an auditor**” implies in the course of performing an audit. The definition of fraud u/s 447 of the 2013 even **includes ‘acts with an intent to injure the interests of the co or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.’**
- However, an auditor may not be able to detect acts that have intent to injure the interests of the co or cause wrongful gain or wrongful loss, unless the financial effects of such acts are reflected in the books or FS of the co and being able to be found out during the course of audit or within the scope of work

# Companies Act 2013 – Fraud Reporting



## *Views - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### **Reporting on frauds detected by the management or other persons and already reported u/s 143 (12) by such other person**

- If the fraud is already reported or detected by the management/ co's vigil mechanism and has been/is being dealt with by them, then the auditor will not be required to report the same u/s143 (12)
- The auditor should apply professional skepticism to verify that the fraud was indeed detected by the management etc.
- Distinction should be clearly made with respect to **frauds detected due to matters raised by the auditor** vis-à-vis those identified by the co through its internal control mechanism.
- However, the auditor should review the steps taken by the management w.r.t. such fraud, and if he is not satisfied, he should request the management to perform additional procedures to enable the auditor to satisfy himself that the matter has been appropriately addressed.

# *Companies Act 2013 – Fraud Reporting*



## *Views - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### **Reporting by auditors u/s 143(12) if the fraud is required to be/has been reported under any other statute**

- For instance, in case of a fraud identified in a bank, the bank auditor should report the fraud to the RBI. If the bank is a co, then additionally the auditor may also report to the CG, if covered u/s143(12)

### **When does an auditor commence reporting u/s 143(12) – based on suspicion - reason to believe – knowledge – or on determination of offence?**

- Although the auditor may suspect or, in rare cases, identify the occurrence of fraud, the auditor does not make legal determination of whether fraud has actually occurred.
- On a harmonious reading of sec 143(12), Rule 13 of the Companies (Audit and Auditors) Rules, 2014 and Form ADT - 4, reporting on fraud is applicable only when the auditor has sufficient reason to believe and has knowledge that a fraud has occurred or is occurring i.e., when the auditor has evidence that a fraud exists.

# *Companies Act 2013 – Fraud Reporting*



## *Vies - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### **Concept of materiality for reporting on fraud**

- The auditor should apply the concept of materiality

### **Reporting in case of corruption, bribery, money laundering and non-compliance with other Laws and Regulations**

- In case of corruption, bribery and money laundering, the direct effect of such act (benefit or penal consequence) is on the co.
- The auditor should comply fraud with respect to illegal acts when performing the audit.
- The auditor also should consider these for the purpose of reporting u/s 143(12)

# *Companies Act 2013 – Fraud Reporting*



## *Views - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### **Reporting when the suspected frauds relates to prior periods**

- if the fraud relating to earlier yrs (1956 Act applicable), reporting u/s 143(12) will be done only if the suspected offence involving fraud is identified by the auditor during the FYs beginning on or after 01 April 2014 and to the extent that the same was not dealt with in the prior FYs either in the FS or in the audit report or in the Board's report under the 1956 Act.



# *Companies Act 2013 – Fraud Reporting*



## *Views - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### **Responsibility of the management**

- Primary responsibility to establish adequate internal control systems to prevent and detect frauds and errors is that of the management of the entity.
- In the case of a co, the BOD, in terms of the provisions of sec 134(5) of the 2013 Act, are required to, inter alia, state as a part of the directors' responsibility statement in the BR to the shareholders, that they had taken proper and sufficient care for safeguarding the assets of the co and for preventing and detecting fraud and other irregularities.
- In the case of a listed co, clause (e) of sub-sec 5 of sec 134 to the 2013 Act requires the directors' responsibility statement to also state that the directors, had laid down IFC to be followed by the co and that such IFC are adequate and were operating effectively.

# *Companies Act 2013 – Fraud Reporting*



## *Views - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### ***Co -ordination with other auditors:***

- Where a suspected fraud against the co is identified/noted by one of the auditors, such auditor **should communicate the same to the other auditor(s)** to enable them to consider and evaluate for his areas and **each of the auditor should individually comply** with the requirements of this section.
- The reporting to those charged with governance and to the CG may be carried out by such auditor who identified/noted the suspected fraud or by any or all of the auditors together.
- When the reporting in Form ADT – 4 is carried out by the such auditor who identified/noted the suspected fraud, such auditor should provide a copy of the Form ADT – 4 to the other auditors.

# Companies Act 2013 – Fraud Reporting



## *Views - Reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)*

### **Modifications to terms of engagement with regard to reporting on fraud**

- Reporting by the auditor on fraud is **not a separate engagement** and is a part of the performance of the duties as an auditor of the co. The terms of engagement between the auditor and the client **will require certain modifications** to incorporate the management's responsibility with regard to fraud and the auditor's reporting responsibility for reporting u/s 143(12).

### **The following clauses may be added to the auditor's engagement letter with regard to reporting on fraud u/s 143(12):**

- As part of auditor's reporting responsibilities
- As part of management's responsibility

# *Companies Act 2013 – Fraud Reporting*



*ICSI Framework on reporting on fraud u/s 143(12) of the 2013 Act to be developed ???*

- Various definitions of fraud
- Applicability of SAs
- Fraud risk factors
- Audit procedures to address risk factors
- Stages of identification of fraud
- Illustrative matters for engagement team discussion on fraud
- Illustrative checklist of inquiries with BOD/AC etc.
- Illustrative format for reporting to board or the audit committee
- Form ADT-4
- Illustrative management representation letter

# *How to cope with Challenges?*



- The multifarious roles & ominous responsibilities mandate that the Secretarial Auditor cannot be a ‘Lone Ranger’.
- It has to be **team effort** where experts across the covered fields are collaborating & proper co-ordination between them is to be ensured.
- Also, audit pre-supposes only ‘reasonable basis’ for ensuring the compliances. Hence, in all other matters, certifications/ comfort letters from the concerned officers of the Company and its Company Secretary may be taken and relied upon.
- Adherence to good corporate practices may be determined after having reference to non-binding provisions of listing agreement, general practices in the industry etc.

# Penalties

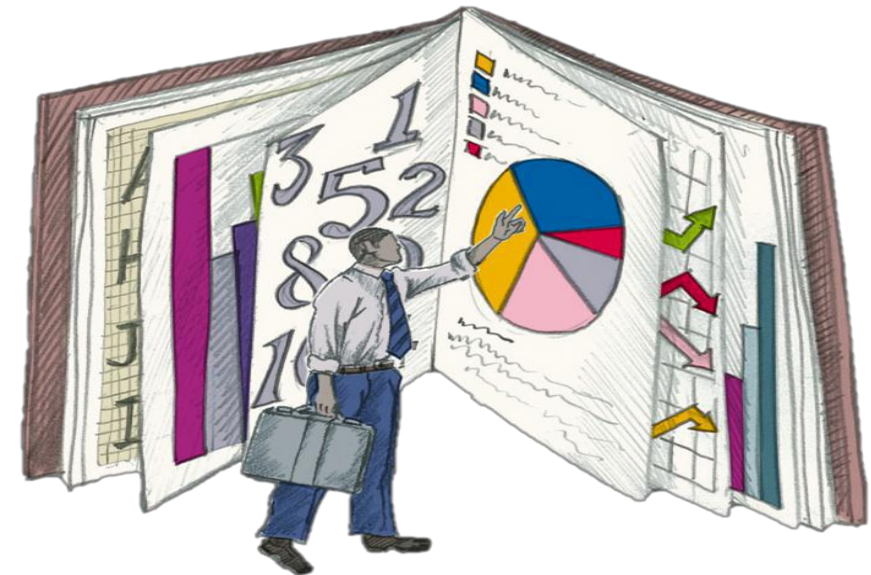


- Co, its officer & PCS who is in default of Section 204 is liable for fine of Rs. 1 Lac to Rs. 5 Lacs.
- PCS who has failed to comply with the provisions of Section 143 is liable for a fine of Rs. 1 Lac to Rs. 25 Lacs.
- CS in employment or PCS may be liable for **disciplinary action for professional misconduct under provisions of Company Secretaries Act, 1980.**
- (Section 448) For any false statement/ material omission Person is liable under Section 447 for a punishment i.e.
  - imprisonment of 6 months to 10 years and;
  - fine of amount not less than the amount involved in the fraud which may extend to 3 times the said amount.

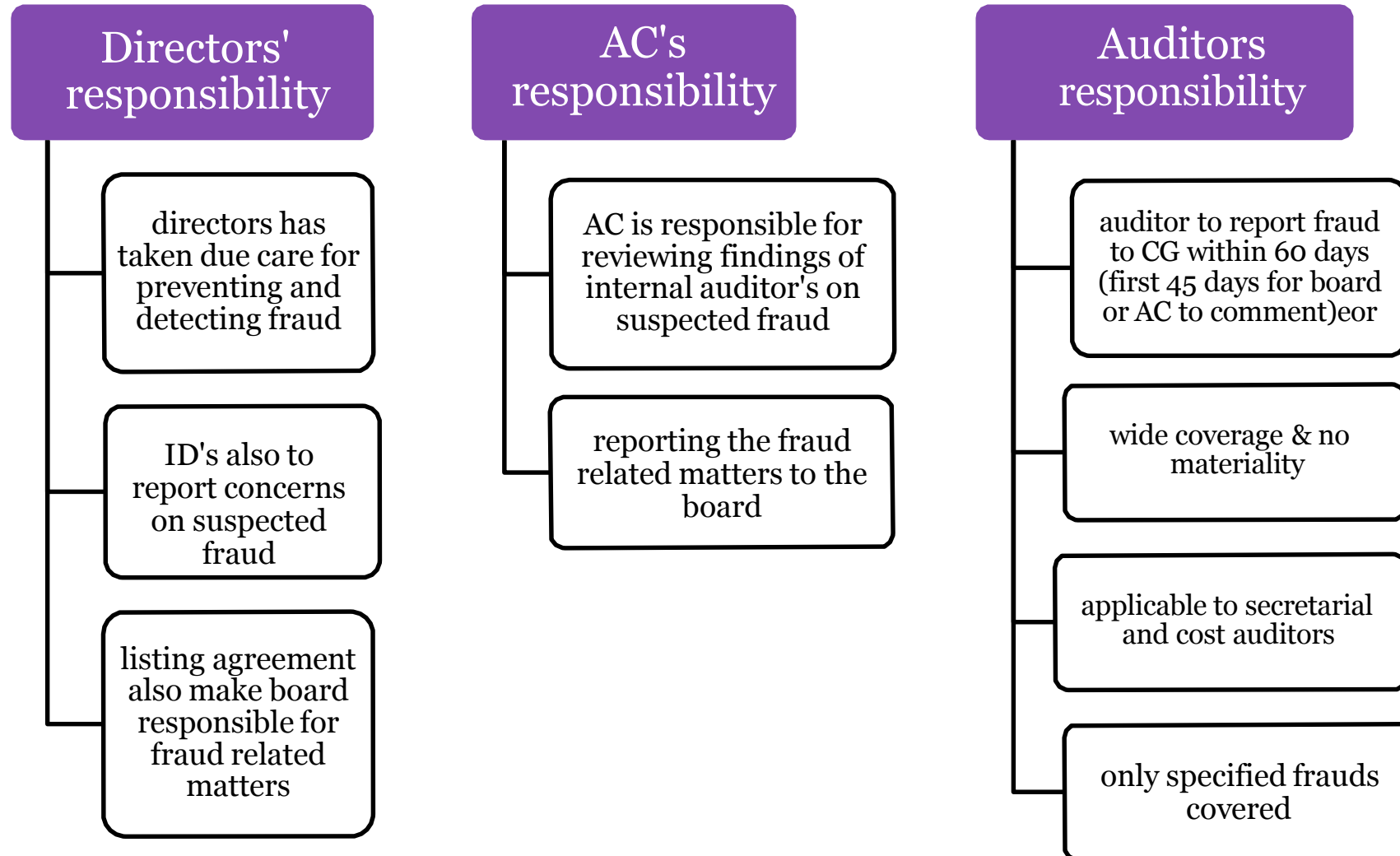
**(Section 451) Punishment for repeated default – twice the amount of fine plus imprisonment**

# *Companies Act 2013 – Fraud Reporting*

## **A Quick Recap.....**



# Companies Act 2013 – Fraud Reporting





# *Companies Act 2013 – Fraud Reporting*



## *View Checks*

**What is the time limit for auditors to send his report on fraud to Board/AC for their comments?**

45 days

**Which of the following statement is correct with respect to fraud reporting?**

- a) the threshold of material fraud is not prescribed under the Act and the final Rules
- b) the threshold of material fraud is prescribed under the Act itself
- c) the threshold of material fraud is prescribed under the final Rules
- d) there is no concept of material fraud under the Act

**When does an Auditor Commence Reporting u/s 143(12) – Based on Suspicion - Reason to Believe – Knowledge – or on Determination of Offence?**

Reporting on fraud in the course of performance of duties as auditor, is applicable only when the auditor has sufficient reason to believe and has knowledge that a fraud has occurred or is occurring i.e., when the auditor has evidence that a fraud exists.

# Companies Act 2013 – Fraud Reporting



## View Checks

**Which of the following persons are not required to report on fraud?**

- a) Statutory auditor
- b) Branch auditor
- c) Internal auditor
- d) Cost accountant

**Sec. 143 (12) includes all fraud i.e. fraud by officers or employees of the co and fraud by third party such as vendors and customers on co?**

No, sec includes only fraud by officers or employees of the co and does not include fraud by third parties such as vendors and customers.

**Should the auditor report on suspected offence involving frauds that may have taken place in any of the subsidiaries, JV, associates of the co?**

The auditor of the parent co is not required to report on frauds u/s 143(12) if they are not being or have not been committed against the parent co by the officers or employees of the parent co.

# ***Companies Act 2013 – Fraud Reporting***



## ***View Checks***

### **What is the responsibility of the auditor in relation to the fraud relating to prior periods?**

Reporting by auditor u/s 143(12) will arise only if the fraud is identified by the auditor in the course of performance of his duties during the FYs beginning on or after 01 April 2014 and to the extent that the same was not dealt with in the prior FYs either in the FS or in the audit report or in the Board's report under the 1956 Act.

### **As per final Rules, the fraud reporting to the CG has to be done by the auditors within?**

- a) 60 days
- b) 45 days
- c) 30 days
- d) 180 days

### **Whether auditor is required to report on the frauds detected by management or other persons and already reported u/s 143 (12)?**

No, the auditor will not be required to report the same u/s 143 (12), since he has not per se identified the fraud.

# Companies Act 2013 – Fraud Reporting



## View Checks

**Which of the following statement is correct with respect to fraud reporting?**

- a) The requirements are equally applicable for secretarial auditor, cost auditor and statutory auditor
- b) The requirements are equally applicable for cost auditor and internal auditor
- c) The requirements are equally applicable for secretarial auditor and internal auditor
- d) The requirements are equally applicable for internal auditor

**As per the recent clarification issued by MCA, for the audit of which of the following, Fraud reporting by auditors is not applicable?**

- a) FS for the periods beginning on or before 31 March 2014
- b) FS for the periods beginning on or before 31 March 2015
- c) FS for the periods beginning on or before 31 March 2016
- d) It is at the choice of the auditor

# *Companies Act 2013 – Fraud Reporting*



## *View Checks*

**Which of the following authority has been vested with statutory powers to investigate frauds relating to a co under the 2013 Act?**

- a) Central bureau of investigation (CBI)
- b) Intelligence Bureau (IB)
- c) Serious Fraud Investigation Office (SFIO)
- d) Forensic department of crime investigation bureau

**Which of the following form is required to be filed for reporting of fraud by the auditor?**

- a) ADT 4
- b) ADT 1
- c) ADT 3
- d) ADT 2

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**In case of joint audit, who should report the suspected fraud to the management and CG?**

The reporting to management and to the CG may be carried out by the joint auditor who identified/noted the suspected fraud or by any or all of the joint auditors together.

**What is the materiality to report frauds or materiality is left to auditors' discretion?**

No limit as of now is proposed under the Companies Bill 2013

**AC is responsible for reviewing the findings of an internal auditors into suspected fraud or irregularity of a material nature and reporting to the board. T or F?**

True

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**Is cost auditor also required to report fraud?**

Yes

**Which of the following persons are primarily responsible for the prevention and detection of fraud?**

- a) BOD and management
- b) Auditors
- c) AC
- d) All of the above

**IDs are not at all required to ensure or overview the fraud. T or F?**

False, IDs shall report concerns about suspected fraud

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**Which of the following sec defines the term 'fraud'?**

- a) sec 448
- b) sec 447
- c) sec 347
- d) sec 348

**As per the definition of fraud, it includes-**

- a) Concealment of fact
- b) Abuse of position
- c) Omission
- d) all of the above



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**Fraud reporting by auditors is first time covered by the 2013 Act. T or F?**

False, CARO 2003 required the auditor to report on any fraud on or by the co.

**Who all are made responsible for prevention and detection of fraud?**

- a) BOD
- b) Independent directors
- c) AC
- d) Auditors

**"Audit is conducted with the intent of detecting fraud". T or F?**

False, as per para 13 of SA 240, *"An audit conducted in accordance with the auditing standards generally accepted in India is designed to provide reasonable assurance that the FS taken as a whole are free from material misstatement, whether caused by fraud or error. The fact that an audit is carried out may act as a deterrent, but the auditor is not and cannot be held responsible for the prevention of fraud and error"*

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**Which of the following statement is correct w.r.t. "punishment for fraud"?**

- a) Punishment has been prescribed in the form of monetary penalties only
- b) No punishment has been prescribed for the contravention
- c) Punishment has been prescribed in the form of monetary penalties as well as imprisonment
- d) Punishment has been prescribed; however can be waived off by CG

**What should the auditor do in case the he fails to get any reply from BOD or the AC within 45 days?**

He shall forward his report within a period of total 60 d to CG together with the note of details that was earlier forwarded to the BODAC for which he failed to receive the reply.

**Whether auditor is required to report if the fraud is required to be/has been reported under any other statute or to any other Regulator?**

No, however if the entity is a co and is governed by the provisions of the 2013 Act, then in addition, the auditor may also be required to report the offence involving fraud to the CG.

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**Once fraud is reported u/s 143(12) to CG, No reporting again under CARO. T or F?**

False. CARO 2015 also requires auditors to report on fraud on or by the co. noticed or reported during the yr.

**Fraud reporting by auditors deferred by 1 year (applicable from FY 1 April 2015). T or F?**

False, reporting on internal financial controls has been deferred by 1 year.

**For non-compliance with sec 143(12), auditor shall be punishable with fine and imprisonment. T or F?**

False, he shall be punishable with fine only.

*Thank you*

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