Corporate Fraud

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Corporate Fraud

- ***Sec 447***: *"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."*

Corporate Fraud

- Elements:
  - **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 **[*Actus Reus*]**
  - 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 **[*Mens Rea*]**
  - whether or not there is any wrongful gain or wrongful loss **[*Outcome is immaterial*]**

Corporate Fraud

- *From a very Corporate perspective:*

Any act or connivance thereof in an act of ***deliberate*** *alteration and/or concealment of sensitive information, in an attempt to make an entity appear otherwise healthy than it actually is.*

Corporate Fraud

- *Reasons:*
  - Raising funds
  - Money laundering
  - Tax evasion
  - Misguiding Governmental authorities for purposes
  - Others: The fraud triangle

https://www.embroker.com/blog/fraud-triangle/

How is fraud committed: Kinds of Fraud

A. Financial fraud
B. Asset embezzlement/devaluation/falsification fraud
C. Corruption

Companies Act 2013
Salient Features

Provides an exhaustive regime to tackle Corporate fraud vide Sections 447 to 451 and 454:

Sec 447 – Definition and penalty

Sec 448 - PUNISHMENT FOR FALSE STATEMENT

Sec 449 – PUNISHMENT FOR FALSE EVIDENCE

Sec 450 - PUNISHMENT WHERE NO SPECIFIC PENALTY OR PUNISHMENT IS PROVIDED

Sec 451 - PUNISHMENT IN CASE OF REPEATED DEFAULT

Sec 454 - ADJUDICATION OF PENALTIES

Companies Act 2013
Salient Features

Section	Fraud	Defaulter
7(5)	Furnishing false information or suppressing material information	Any person who does so
8	Affairs of the company conducted fraudulently	Every officer in default
34	Mis-statements in prospectus	Every person who authorizes the issue of prospectus
36	Fraudulently inducing persons to invest money	Any person who does so
38	Personation for acquisition, etc. of securities	Any person who does so
46(5)	Issuance of duplicate certificate of shares	Every officer who defaults
75(1)	Company fails to repay deposits/ interests	Every officer of the company
206	Business being carried out for fraudulent or unlawful purpose	Every officer who defaults
229	Person required to provide an explanation or make a statement during an investigation furnishes false statement or destroys documents	Person who was required to provide the explanation or make the statement
251	Application is made for removal of name from register with the object of evading liabilities or deceiving or defrauding the creditors	Persons in charge of management of the company
266	If Tribunal concludes that an employee during the period of his employment with a company was guilty of any misfeasance, malfeasance or non-feasance in relation to the sick company	Any person who is found so guilty
448	A person who makes a false statement or omits a material fact in any return, report, certificate, financial statement, prospectus	Person who makes such statement

Source: https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/696380/corporate-frauds-an-analysis

Companies Act 2013
Salient Features

- Section 441 of the Companies Act, 2013, and the Companies (Compounding of Offences) Rules, 2016 deal with compounding;
- Viewed as personal liability of Directors and KMP's
- Liability with Independent Directors of Company to:
  - Report concerns suspected instances of fraud as well as actual fraud;
  - Ascertain and ensure setting up of vigilance mechanism
  - As well to protect those who use are not prejudiced or harmed

How do we prevent it?

- Step 1 - Inquire into:
  - Incomplete filings.
  - Financial statements or documents indicate prima-facie non-compliances, like variances in dates or financial data.
  - Doubts on existence of the company.
  - Redress grievances raised by investors or depositors or other stakeholders.
  - References from other regulators or departments.
  - Verify facts on the basis of investor complaints or otherwise.
  - Financial statements indicate too good or too bad financial position.

How do we prevent it?

- Step 2 Inspection when:
  - Refusal or disobedience of the inquiry orders.
  - Inquiry indicates need for deeper examination of the books of account, like volume of records.
  - Need to verify the disclosures in financial statements with the books and records.
  - Recording of statements.
  - Physical verification of registered or other offices of the company.
  - Higher number or frequency of investor complaints.

How do we prevent it?

- Step 3 Investigate when:
  - Similar reasons, but where larger interest of a number of investors or stakeholders are affected.
  - Larger public issues—issues of revenue, etc.
  - Inquiry/inspection indicates elements of fraud.
  - Specific issues are to be examined instead of general examination of books and records

How do we prevent it?

- Provisions to take recourse to:
  - Sections 206 to 209 of the Act empowers the Registrar to call for information, inspect the books and conduct inquiries.
  - Section 210 further provides that the Central Government may order an investigation into the affairs of the company.
  - Sections 211 to 216 describe the establishment of a Serious Fraud Investigation Office (SFIO) and investigation by an Inspector so appointed.
  - The procedure of such investigation has been stated under Section 217 of the Act.
  - Further Sections provide for related steps for investigation and penalty for furnishing false statements, mutilation and destruction of documents by the erring companies.

THANK YOU

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