



“Companies Act – Our Roles & Responsibilities  
Let’s Match up with the Changing Scenario”

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## Journey of the Companies Act, 2013 continues...

Companies Act, 2013 - 29<sup>th</sup> August, 2013



98 sections notified on 12<sup>th</sup> September, 2013



183 sections notified on 1<sup>st</sup> April, 2014



Rules Notified - 27<sup>th</sup> March, 2014



Various circulars and notifications passed for updating the act



Companies Amendment Act, 2015 - 25<sup>th</sup> May, 2015



Report by Company Law Committee dated 01<sup>st</sup> Feb, 2016



Companies Amendment Bill, 2016 -  
introduced in Lok Sabha on 16<sup>th</sup> March, 2016



Companies Amendment Bill, 2016 -  
referred to the Parliamentary Standing Committee on Finance  
12<sup>th</sup> April, 2016

# Companies Act - Objectives

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Facilitate business-friendly corporate regulations



Raise transparency & protect the investor's interests



Improve corporate governance



Enhance self-regulation



Enhance accountability on independent directors and auditors



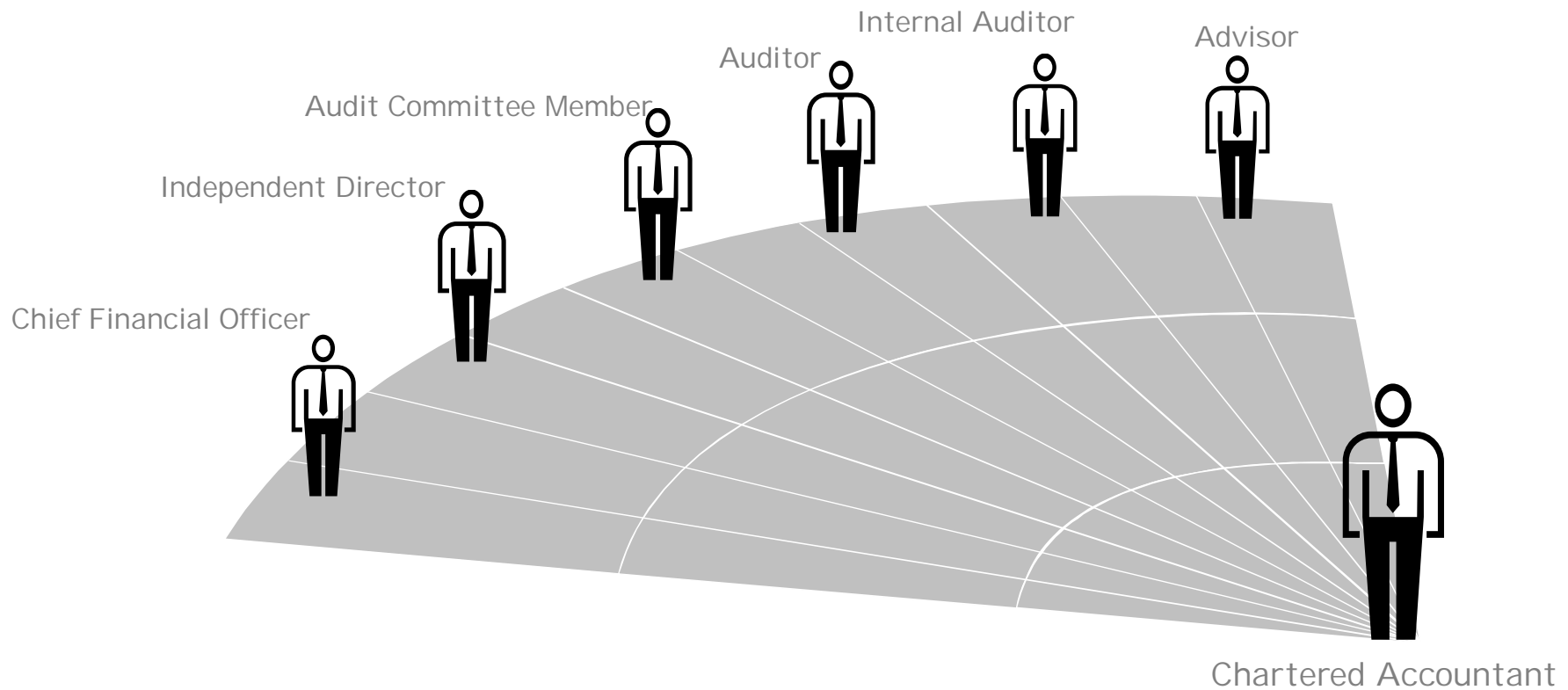
Use of technology in compliance and governance



Reduce the number of Government approvals

# Roles of a Chartered Accountant under the Act

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## Enhanced Responsibilities

- 1 Corporate Governance
- 2 Financial Reporting
- 3 Internal Controls
- 4 Risk Management
- 5 Fraud detection and prevention

# Corporate Governance



# Independent Director

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## Roles and code of conduct

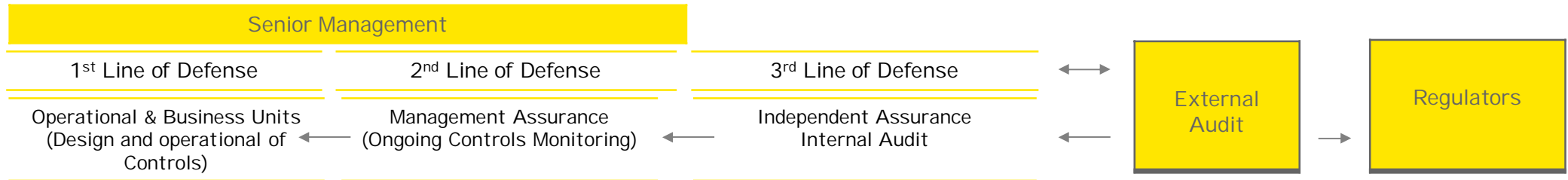
- u uphold ethical standards of integrity and probity
- u maintain independence
- u help in bringing an independent judgment to bear on the Board's deliberations
- u bring an objective view in the evaluation of the performance of board and management
- u balance the conflicting interest of the stakeholders
- u insist that their unresolved concerns are recorded in the minutes of the Board meeting
- u Separate meeting to evaluate performance of non-independent directors and Board

*An independent director and a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.*

# Leading practices for Independent Directors



## Three lines of defense for Independent Directors



## Leading practices

- u Undergo induction and training programmes
- u Conduct due diligence and background check on promoters/companies
- u To get insight into the company – ‘Walk the ground’ or ‘Meet executives below the Board level’.
- u ‘Ask’ for the information they need and not merely accept what is provided
- u Hold independent director sessions without management
- u Appoint lead independent director
- u Achieve proficiency on recent tools/techniques to prevent and detect fraud



# Role of an Audit Committee Member



Traditional Roles	Evolving Roles
§ Financial Reporting	§ Internal Financial Control
§ External Auditor	§ Approval of related party transactions
§ Internal Auditor	§ Merger & Acquisition
	§ Valuation
	§ CFO succession plan
	§ Whistle-blower
	§ Risk Management
	§ Scrutiny of inter corporate loan and investment

Leading practices to conduct the Audit Committee effectively:

- ∅ Convene the meeting at least 6 times during a financial year. Duration should be 2-3 hours
- ∅ Audit Committee agenda should be circulated well in advance
- ∅ Convene at least a day prior to Board meeting
- ∅ Promote healthy skepticism among fellow committee and board members
- ∅ Ensure IA have a direct functional reporting line to the committee and relate IA function to other risk function- legal, security, compliance, environmental
- ∅ Evaluate the expertise and competence of the members in the context of the company's strategy and risks
- ∅ Avoid Group thinking and engage independent advisor, when necessary

# Corporate Social Responsibility



## Board level CSR Committee:

- ▶ Comprising of 3 or more directors with at least one independent director,
- ▶ Composition to be disclosed in the annual Board of Directors' report

## Responsibilities of the CSR Committee:

- ▶ Formulate and recommend a CSR Policy and amount of CSR expenditure
- ▶ Regular monitoring of the CSR initiatives

Annual spending on CSR by companies:  
Every financial year, at least 2% of the average net profits made during the 3 preceding financial years

## Responsibilities of the company's Board:

- ▶ Approve and disclose CSR Policy in the annual Directors' Report and on company website
- ▶ Ensure implementation of CSR activities as per the Policy
- ▶ Directors' Report to specify reasons in case the specified amount is not spent

## Responsibilities of the Independent Director:

- ▶ Monitor the performance of CSR activities
- ▶ Impact assessment to identify the performance gaps and areas of improvement
- ▶ Ensure compliance of the required policy

# Related Party Transactions

Compliance to be evidenced through relevant documentation

- ▶ Process and requirement dependent on assessment of :
  - ▶ Arm's length pricing
  - ▶ Ordinary course of business

- ▶ Approval required from:
    - ▶ Audit committee
    - ▶ Board
    - ▶ Shareholders\*
- \*In case of specified transactions

Internal Auditor



CFO



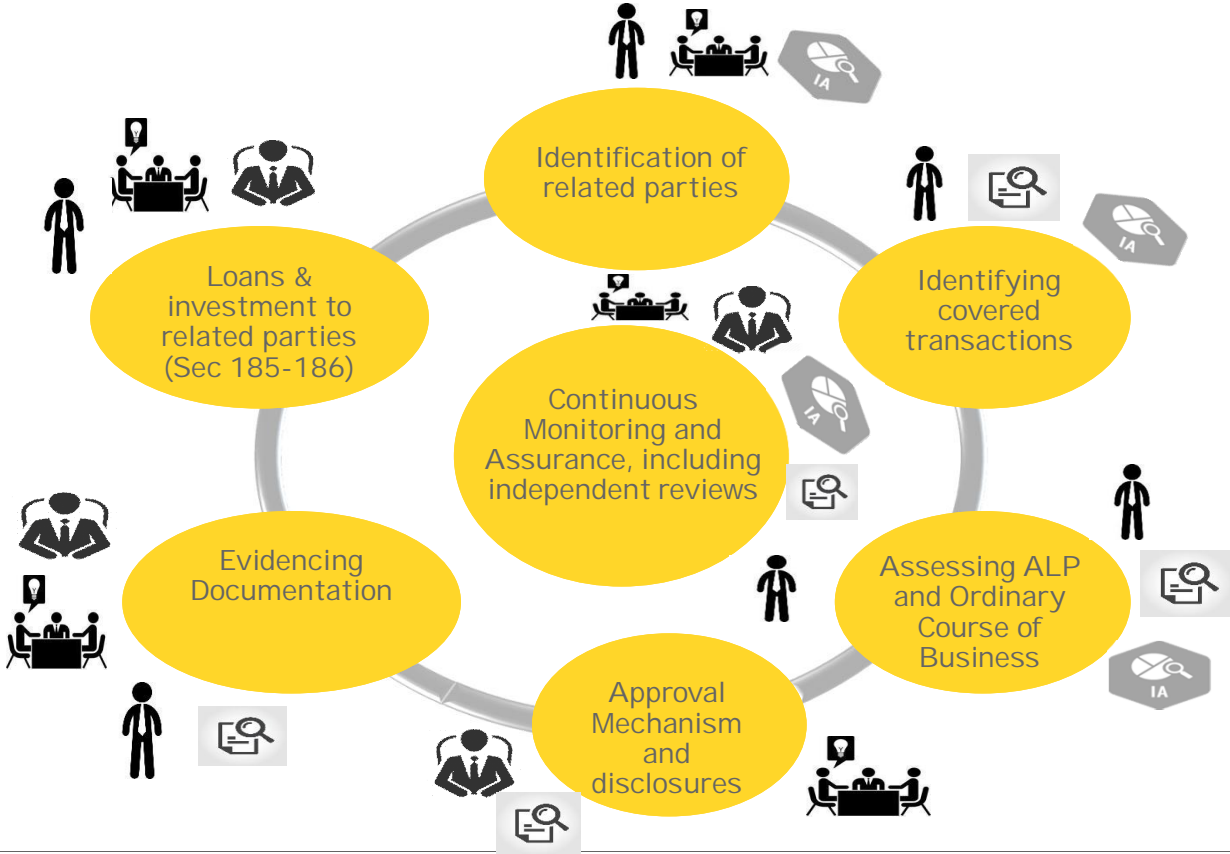
Statutory Auditor



Independent Director



Audit Committee



# Financial Reporting



# Ind AS - Key principles



Substance  
Over Form



Focus on  
achieving  
Balance Sheet  
right



Extensive use  
of fair value

# IND AS

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## Key Considerations

- u Potential impact on Business
- u Key areas to consider when planning
- u Management Reporting
- u Industry peers and Competitors
- u Capitalizing on the Ind AS conversion opportunities
- u Non GAAP measures
- u Training

## Alternative Performance Measures ('APMs')

- u Non-GAAP financial measures like Production and sales metrics, work force etc.
- u Valuable insights to analysts/investors
- u Highlights key value drivers
- u Provide a useful comparison
- u Sets benchmark for Corporate reporting

# Consolidation and Board Report Disclosures



## Consolidation

Mandatory for all applicable Companies ...

Gear up for the financial reporting process ...

Additional disclosure requirements ...

## Board Report Disclosures



- ... Annual evaluation of Board/Directors
- ... KMP Disclosures
- ... Contract, arrangements – related parties
- ... Risk Management, NRC and CSR Policy
- ... Directors Independence, Auditors Qualifications
- ... Adequacy & operating effectiveness of Internal Financial Controls
- ... Proper systems to comply with all laws and regulations
- ... Median Remuneration

# Auditors and reporting responsibilities





# Auditor Rotation and Reporting responsibilities



## AUDIT ROTATION

### Key considerations for Companies

- ▶ Assessment for change of auditors
- ▶ Involvement of Audit Committees
- ▶ Transition planning
- ▶ Monitoring of Audit and Non-audit services and service providers

### Key Considerations for Auditors

- ▶ Independence Compliance framework
- ▶ Investment in Training, Technical and Industry capabilities
- ▶ Transition planning and management

## KEY REPORTING RESPONSIBILITIES

### Key Reporting Responsibilities

- ▶ Fraud reporting to Central Government
- ▶ Matters which have an adverse effect on the functioning of the Company
- ▶ Internal Controls over Financial Reporting
- ▶ Pending litigations and provisions for material foreseeable losses on long term contracts

# Future of Audit

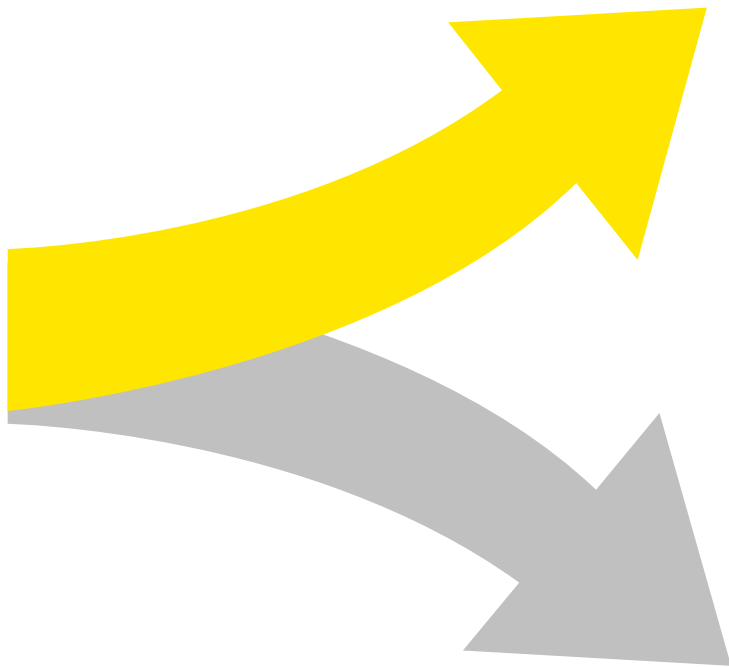


- ▶ Auditing in digital age
- ▶ Focused Analytic capabilities
- ▶ Auditors must move beyond the numbers
- ▶ Shift from 'Reactive' to 'Proactive'
- ▶ What shareholders want ?
- ▶ Real time Auditing
- ▶ Integrated Reporting



# National Financial Reporting Authority ('NFRA')

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- ▶ NACAS to be replaced by NFRA
- ▶ Will continue making recommendations on formulation of accounting standards
- ▶ Additional responsibilities:
  - ▶ To make recommendations on formulation of auditing standards
  - ▶ Monitor and enforce compliance with accounting and auditing standards
  - ▶ Oversee the quality of service rendered by professionals
  - ▶ Investigate matters of professional and other misconduct
- ▶ Will have the same power as vested in the civil court
- ▶ Will act as an oversight body for the ICAI

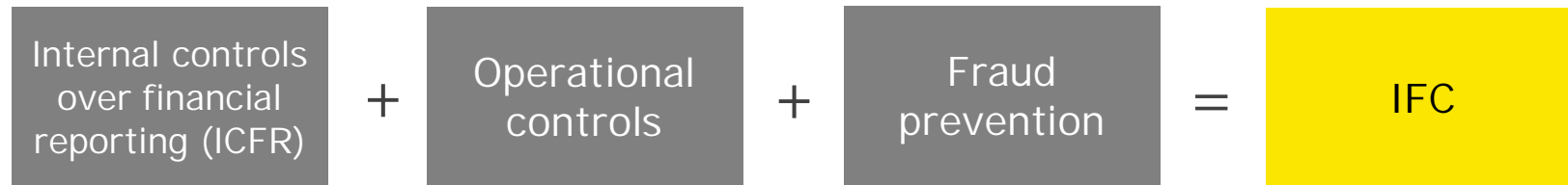
# Internal Controls



# Internal Controls



## Internal Financial Controls



## Internal Controls over Financial Reporting



# Internal Financial Controls – Who Are Responsible?



CFO

- Develop a risk management framework
- Benchmark controls against leading practices
- Implement a robust system of compliance management
- Use of technology for proactive monitoring
- Continuous controls monitoring and fraud risk analytics through Data Analytics



Auditors

Reporting Responsibilities of Auditors on ICFR:

- Adequacy of internal financial controls system and the operating effectiveness of such controls
- Evaluation of control deficiencies and reporting them appropriately



Independent Director /  
Audit Committee

- To satisfy on the integrity of financial information
- To ensure that financial controls are robust and defensible
- To oversee the integrity of the company's ICFR,
- Seek regular report from internal auditor and external auditors



Board of Directors

- u Review the assessment and seek view of the Audit Committee

# Internal Financial Controls – Global Experience



## Learnings for Companies

- ▶ Enterprise-wide internal control management
- ▶ Formal enterprise risk management program
- ▶ Adequate controls around non-routine, complex, and unusual transactions
- ▶ Effective controls over the IT environment
- ▶ Effective financial reporting and disclosure processes
- ▶ Formal controls over the financial closing process
- ▶ Evaluate and test controls over outsourced processes

## Learnings for Auditors while reporting

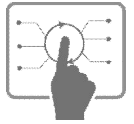
- ▶ Identify and test controls around risks of material misstatement
- ▶ Test the design and operating effectiveness of management review controls
- ▶ Obtain sufficient evidence to update test of controls
- ▶ Test the system-generated data and reports
- ▶ Perform procedures around the work of others
- ▶ Evaluate the control deficiencies
- ▶ Consider the effect of deficiencies on the financial statements and audit of internal control.

# Enterprise Risk Management





# Enterprise Risk Management (ERM)



Sec 134 : Board  
Sec 177: Audit  
Committee

Ø Oversee  
strategic and  
operational  
risks

Ø Oversight to  
ERM

Internal Auditor

Ø Independent  
assurance to  
Board on  
effectiveness of  
ERM

Ø 3<sup>rd</sup> Line of Defense

Chief Financial  
Officer

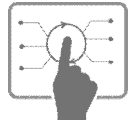
Ø Key role in ERM  
to meet reporting  
in Directors  
Responsibility  
Statement

Ø Vigil Mechanism

Schedule IV:  
Independent Director

Ø Ensure systems  
of risk  
management are  
robust and  
defensible

# Leading Practices for Risk Mitigation



## Business Risk



### Leadership and organization

- Assigning responsibility throughout the organization
- Leveraging internal audit



### Tools and Techniques

- Running desktop exercises
- Using data analytics and company surveys
- Factoring in risk appetite



### Board and Audit Committee Practices

- Prioritizing risks
- Taking risk-related field trips to business units
- Establishing a risk committee or other committees that focus on a specific risk
- Balancing tenure and diversity



### Training

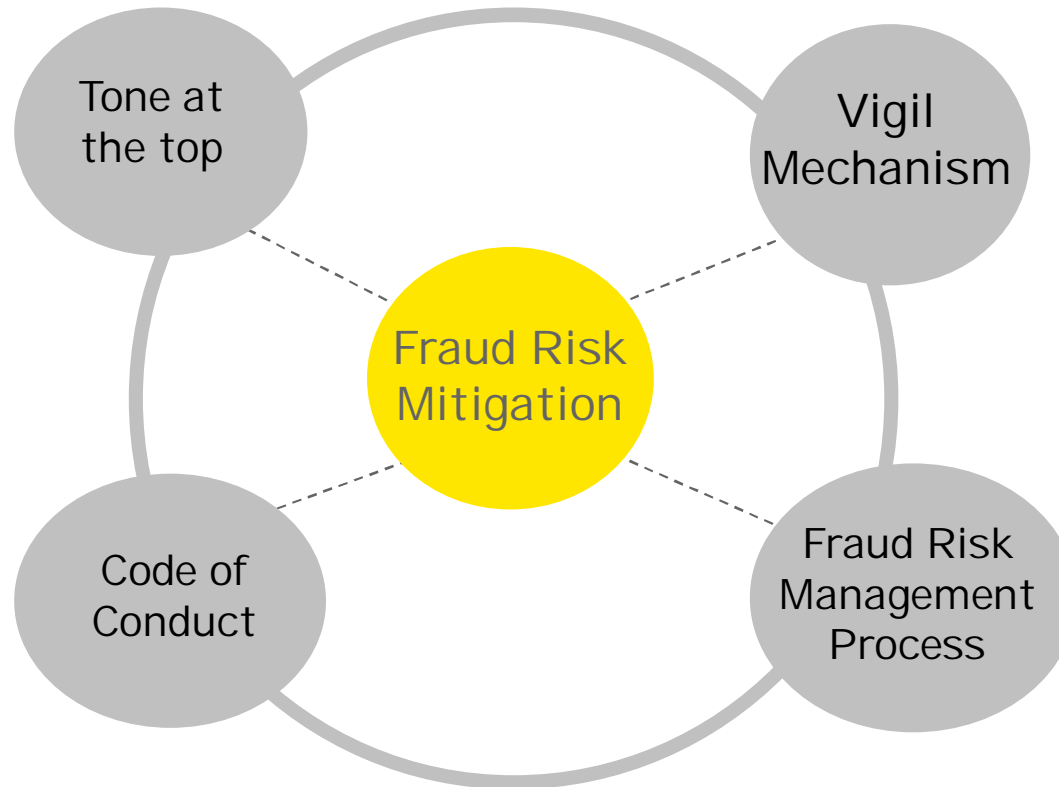
- Providing Training throughout the organization

# Fraud Detection and Prevention



# Fraud detection and prevention

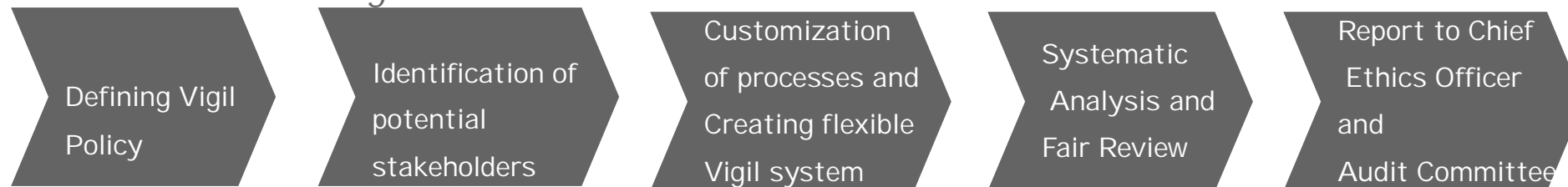
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# Fraud detection and prevention



- *Process Flow of Vigil Mechanism*



- *Best Practices for Vigil Mechanism*



Hotline Facility



Outsourcing to third party



Awareness amongst employees



Anonymity



Training



Implement a Fraud Response Plan

- *SFIO*

The SFIO consisting of experts from various fields for detecting and prosecuting or recommending for prosecution white-collar crimes/frauds and shall investigate serious cases which are characterized :

- Complexity and having inter-departmental and multi-disciplinary ramifications ;
- Substantial involvement of public interest
- leading to or contributing towards a clear improvement in systems, laws or procedures.

# Internal Audit (IA)



With requirements of the Act warranting organisations to provide assurance to the Board of Directors and Audit Committees the role of internal auditor has been redefined on

- Ø Adequacy of internal financial controls
- Ø Effective risk management processes
- Ø Anti-fraud controls
- Ø Effective legal compliance framework

Why the IA function is suitably positioned to be an enabler of good corporate governance?

- u Third Line of Defense:
  - Plays an integral role in the governance structure aligned with stakeholders
- u More than just a compliance function
- u Sound understanding of business strategy and associated risks
- u Strategic plan:
  - It is developed in collaboration with the management, aligned to the organization's risk profile

Responding to the changes

- u Set up an internal audit charter
- u Internal financial controls
  - - - Develop internal control framework and testing of operating effectiveness of internal controls.
- u Strengthening enterprise risk assessment process
  - - - Expand risk assessment to include strategic risks and educate stakeholders on risk management practices.
- u Assessing fraud risk vulnerabilities
  - - - Identify relevant fraud risk factors and include potential fraud indicators in the audit plan.
- u Comprehensive legal compliance framework
  - - - Develop integrated internal audit and compliance model
- u Implement technology solutions for data analytics and continuous control monitoring

# Leading Practices for Internal Audit



1

## *Making strategic investments:*

- § Subject Matter experts
- § Upgrading talent
- § Make knowledge investments
- § Technology

3

## *Expand/ Rebalance service portfolio:*

- § Deepen end - to - end capabilities
- § Value preservation to value creation
- § Strategic vision

2

## *Strengthen operations / delivery:*

- Positive assurance and exception reporting
- Self-assessment process
- Proactively respond

4

## *Improve Contribution:*

- § Invest in understanding business
- § End-to-end optimization
- § Greater alignment with AC

# Redefined role of CFO

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Risk Management



Frequent Compliance Audit



Investor Management



Improve relationship with AC and Board



Financial Reporting



Data Analytics



Mergers & Acquisitions



Cyber Security



Enhanced Communication Skills



Business Partnering



# Penalties & Prosecutions



# Prosecution and Penalties

Clause	Punishment	
	Company	Officer in default
Punishment for Fraud / False Statement (S 447 and 448)		Imprisonment : 6 months - 10 years and Fine : Amount of fraud - 3 times of the amounts involved.
Punishment for false evidence (S 449)		Imprisonment: 3 years - 7 years and Fine : Upto Rs 10 lacs
Prohibition on insider trading of Securities (S 195)		Imprisonment: May extend to 5 years or Fine: Rs. 5 lacs, may extend to Rs. 25 crores or 3 times of profit made (whichever is higher) or both
Financial statement, Board's report, etc. (Clause 134)	Fine: Rs. 0.5 lacs to Rs 25 lacs	Punishable with imprisonment which may extend to 3 years or Fine Rs. 0.50 lac to Rs. 5 lacs or with both.
Related Party Transaction (S 188)		Imprisonment upto 1 year or Fine Rs. 0.25 lacs to Rs. 5 lacs or both
Punishment in case of repeated default (S 451)	Within a period of 3 years - Company / every office in default punishable with twice the amount of fine for such offence, in addition to any imprisonment.	
Punishment where no specific penalty is provided (S450)	Company and every officer in default - Fine extending to Rs 10,000 and where it is a continuing offense, further fine of Rs 1,000 every day.	

## S 441 - Compounding



Compoundable offences:-

- ▶ Fine only or;
- ▶ Imprisonment or with fine or \*
- ▶ Imprisonment or with fine or with both or \*;

\* Compoundable with permission of the Special court set up under Code of Criminal Procedure, 1973.

Non - compoundable offences:-

- ▶ Imprisonment only or;
- ▶ Imprisonment and with fine

## S 147 - penalty on Auditors



Acted in fraudulent manner-

- ▶ Partner/partners of firm jointly and severally liable;
- ▶ In case of criminal liability, only on the concerned partner
- ▶ Fine Rs. 0.25 lacs to Rs. 5 lacs;
- ▶ Fine of Rs.1 lacs to Rs. 25 lacs

Class action suits - S 245

Company: Fine not less than Rs.5 lacs, up to Rs.25 lacs to company

Officer: Imprisonment up to 3 years

Fine of Rs. 0.25 lacs to 1 lac



Thank you