

Section 143 (12) Fraud Reporting, Fraud Reporting under CARO and related aspects

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16 December 2017

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Agenda

☐ *S. 143(12) Fraud Reporting*

- Overview
- Persons covered
- Reporting under various scenarios

☐ *Reporting under CARO*

- *Comparison with S.143(12)*

☐ *Other related aspects of Fraud*

- *Definition of fraud*
- *Engagement letter, reporting format, representation letter*

S. 143(12) Fraud Reporting

Overview

- Effective from 1 April 2014
- Support of auditor in:
 - Transparency and
 - Disciplineto protect interests of shareholders and public
- Auditor to report a) while performing his duties b) if he has reason to believe c) if offence involving fraud is being / has been committed d) by officers or employees e) against the company f) within timeline

Overview

S.134(5) and SA 240, Auditor's Responsibilities relating to Fraud in an Audit of Financial Statements –

- Primary responsibility of both those charged with governance and management of the entity
- Board's report to include a responsibility statement

Overview

Performance of duties –

- Statutory audit
- Limited review under SEBI Listing Agreement
- Tax audit
- Interim financial statement audit
- Group reporting
- Certification under statutes
- Other non-attest services

Overview

Reason to believe –

- Suspicion
- Reason to believe
- Knowledge

Overview

Offence –

- Legal determination

Being committed / has been committed -

- Stage in which offence exists

Overview

Employees –

- Permanent employees
- Temporary and contract workers not covered

Officers -

- Definition under S.2(59)
- Include director, KMP

Third parties and vendors not covered

Overview

Against the company –

- Standalone financial statements
 - Branches / divisions
- Consolidated financial statements
 - Subsidiaries, joint ventures, associates
 - Indian components vs. foreign components
 - Components which are not companies

Overview

Within the timeline –

- To Board / Audit Committee - 2 days of 'reason to believe / knowledge'
 - To Central Government – 15 days from the date of receipt of reply from Board / Audit Committee
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- Board / Audit Committee to reply within 30 days
 - In case of no reply from Board / Audit Committee, auditor to report to Central Government within 15 days of lapse of time for reply

Persons covered

- Statutory auditor - S.143(12)
- Branch auditor – S.139
- Cost auditor – S.148
- Company secretary – S.204

Not covered –

- Internal auditor – S.138
- Tax auditor
- VAT auditor

Reporting under various scenarios

- Fraud noted by the auditor first before the management
 - Report to the management first and then to central government
- While providing attest / non-attest services
 - Exercise professional judgment to evaluate materiality of the information
 - Uses or intends to use the information obtained when performing audit
- Fraud reported by management / reported by other persons
 - No reporting required
 - Review steps undertaken by management to address fraud
 - Report if dissatisfied by steps undertaken

Reporting under various scenarios

- Fraud relates to period prior to 2013 Act
 - Report to the extent that the same was not dealt with in the prior years either in the financial statements or in the audit report or in the Board's report
- Fraud relates to corruption, bribery, money laundering or non-compliance with other laws and regulations
 - If carried out by employees or officers
 - Take cognizance of guidance under paragraph 28 of SA 250, Consideration of Laws and Regulations in an audit of Financial Statements
- Fraud noted in an audit of a bank
 - Report to RBI in addition to Chairman / MD / CEO of the bank
 - Report to central government if the bank is a company

Reporting under CARO

CARO compared with S.143(12)

CARO	S.143(12)
<p>Whether any fraud <u>by the company</u> or any fraud on the company by its officers or employees has been <u>noticed or reported</u> during the year; if yes, the nature and the amount involved is to be indicated</p>	<p>If <u>an auditor</u> of a company, in the course of the performance of his duties as auditor, <u>has reason to believe</u> 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.</p>
<p>Management has knowledge Reporting threshold not defined Report to the members / shareholders</p>	<p>Auditor has knowledge / reason to believe Reporting threshold defined Report to the government / those charged with governance</p>

Other related aspects of Fraud

Definition of fraud

- S.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.

- SA 240, The Auditor's Responsibility Relating to Fraud

Fraud - An intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage.

Other matters

- Engagement letter
 - Auditor's reporting responsibility
 - Statement that the reporting will be made in good faith
 - Management responsibility, including providing instances reported by others
- Reporting format
 - ADT-4
- Representation letter
 - Management responsibility for internal controls
 - Disclosing significant facts relating to fraud known to management
 - Disclosing results of assessment of risk on financial statement due to fraud
 - Assertion that impact of uncorrected misstatements due to fraud is immaterial, if relevant

Thank You