

# **Reporting of Frauds by Auditors**

**Presentation**  
**by**  
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# Duties under Section 143 of the CA, 2013

- Subsection (1) – Six enquiries to be made (similar to section 227(1A) of the CA, 1956).
- Sub section (2) & (3) – to make a report to the members on specified matters.
- Sub section (3) – Auditors Report to state other matters ( as may be prescribed in Rules)
- Sub-section (11) – Central govt.'s power to ask auditors to report on specified matters.  
(Similar to section 227(4A) of the CA, 1956.)
- Sub-section (12) – Reporting of fraud by auditors.

## Sec 143(12) of the CA, 2013

- “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 of fraud involving such amount or amounts as may be prescribed, is being or has been committed against the company by officers or employees of the company, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed.
- Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed

# The Companies (Audit and Auditors) Rules, 2014

Rule 13 substituted by Notification dated 14.12.2015.

Rule 13- the auditor to report the matter to the Central Government if it involves or is expected to involve individually an amount of Rs 1 crore or above. (sub-rule 2).

Other cases, the auditor shall report the matter to audit committee or to the Board only. (sub rule 3)

## ‘Guidance Notes’ issued by AASB

- Guidance Note on Reporting of Frauds by Auditor issued by AASB.
- Guidance Notes are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance to resolve issues which may pose difficulty.
- Guidance Note was issued before the section was amended.
- Guidance Notes are recommendatory in nature.

# Sec 143(12) of the CA, 2013

- “Notwithstanding anything contained in this section...

# Sec 143(12) of the CA, 2013

- Notwithstanding anything contained in this section, if an auditor of a company...

# Sec 143(12) of the CA, 2013

- Branch auditor----- covered.
- Joint auditor----- covered.
- Internal auditor---- not covered.
- Tax auditor---- not covered.



## Companies (Audit and Auditors) Rules, 2014

- Rule 13 (5)- The provision of this rule shall also apply, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

# Sec 143(12) of the CA, 2013

- Notwithstanding anything contained in this section ,if an auditor of a company in the course of the performance of his duties as auditor...

# How auditor performs his duty?

- By adhering to standards on auditing (SAs).
- Sec 143(2) requires auditor to make his report after taking into account, inter alia, the auditing standards.

# SAAs – Audit of Historical Financial Information

- General Principles and Responsibilities-  
(200-299)- 9 standards at present.
- Risk Assessment & Response to Assessed Risk-  
(300-499)- 6 standards at present.
- Audit Evidence-  
(500-599) – 11 standards at present
- Using Work of Others  
(600-699)- 3 standards at present
- Audit Conclusions & Reporting-  
(700-799) – 5 standards at present.

# SA 240 – The Auditor's Responsibilities Relating to Fraud in an audit of Financial Statements

- It is designed to assist the auditor in identifying and assessing the risks of material misstatement due to fraud and in designing procedures to detect such misstatement.
- It expands on how the following two SAs are to be applied in relation to risks of material misstatement due to fraud:
  - SA 315- Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment.
  - SA 330- The Auditor's Response to Assessed Risks.
- Implementation Guide to Risk Based Audit of Financial Statements is also available.

# Reporting in case of CFSs

- Section 129 (3) requires a company to prepare CFSs in case it has a 'subsidiary'.
- CFSs are also to be prepared, presented and audited in the same manner as stand alone financial statements.
- Therefore, reporting requirements would be applicable in respect of CFSs also. However, other condition that offence involving fraud has been committed by the officers or employees of the parent company.

# in the course of the performance of his duties as auditor...

Attest or non- attest services carried out after  
1.4.2014 in the capacity as auditor of the company

- Audit of interim financial statements
- Limited Review/ quarterly financial result audit
- Tax Audit
- Issue of Certificates

Though may not be pursuant to any requirement of the CA, 2013 but shall be construed as being in the course of performing his duties as an auditor.

# Sec 143(12) of the CA, 2013

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....



# Reason to believe

- Rule -13 specifies the threshold for reporting as 'sufficient reason to believe' and 'knowledge'.

# 'Reason to believe' and other terms

- **Suspicion**- is a state of mind more than 'speculation' but short of 'knowledge'. It is without sufficient evidence.
- **Reason to believe**- there is sufficient information or convincing evidence to advance beyond suspicion that it is possible someone is committing or has committed a fraud.
- **Sufficient reason to believe**- if on evaluation of all the available information and applying appropriate level of skepticism, the conclusion is drawn that fraud is being or has been committed.

## Sec 143(12) of the CA, 2013

- 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 of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company...

# Scope of the term “Fraud”

- Fraud - is it different from ‘offence involving fraud’ ?
- Will it cover:
  - Bribery
  - Money laundering  
or/and
  - Non- compliances with laws.

# Offence involving fraud

- SA 340 – 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.
- So auditor would not be able to determine whether ‘offence’ or ‘suspected offence’ involving fraud has been or is being committed.
- Harmonious reading shall be ‘... fraud ( not offence of fraud) is being or has been committed against the company...

# Fraud- Explanation to Section 447

- “Any act or omission, concealment of the fact or abuse of position committed by any person himself or by other person in connivance in any manner, with intent to deceive, to gain undue advantage from or to injure the interest of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.”

# Fraud- Explanation to Section 447

- “Any act or omission, concealment of the fact or abuse of position committed by any **person officer or employee** himself or by other person in connivance in any manner, with intent to deceive, to gain undue advantage from or to injure the interest of the company **or its shareholders or its creditors or any other person**, whether or not there is any wrongful gain or wrongful loss.”

# Fraud- SA 240- The Auditor's Responsibility Relating to Fraud in an Audit

- “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.”



# Difference in definitions of 'Fraud'

- SA 240- an intentional act to obtain an unjust or illegal advantage.
- Sec 447- an act, omission, concealment of facts or abuse of position with an intent to deceive, to
  - gain undue advantage from or
  - injure the interest of the company.
- Guidance Note recommends to go as per SA 240 .

# Reporting in case of Corruption, Bribery, Money Laundering and Non- compliance with Other laws

- The auditor to examine :
  - Whether such act s have been carried out by officers or employees of the company and
  - Whether such acts have direct effect on the company.
- SA 250- Consideration of Laws and Regulations in an Audit of Financial Statements to be adhere to.
  - Para 28 refers to statutory liability to report.

# Sec 143(12) of the CA, 2013

- 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 that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees...

## Sec 2(59)- Definition of 'Officer'

- “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.
- Sec 2(51) “key managerial personnel”, in relation to a company, means—
  - (i) the Chief Executive Officer or the managing director or the manager;
  - (ii) the company secretary;
  - (iii) the whole-time director;
  - (iv) the Chief Financial Officer; and
  - (v) such other officer as may be prescribed (not yet prescribed).

# Officer

- Third parties are not covered.
- Whether 'advisors' are covered?

# Sec 143(12) of the CA, 2013

- 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 that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the central Government within such time and in such manner as may be prescribed:

# Procedure of reporting in Rule 13(2)

- (i) Auditor to forward his report to the Board or the Audit Committee, as the case may be, immediately but not later than 2 days after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;
- (ii) on receipt of such reply or observations ,the auditor shall forward his report and the reply or observations with his comments (on such reply or observations) to the Central Government within fifteen days of receipt of such reply or observations;
- (iii) in case the auditor fails to get any reply or observations within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit committee for which he has not received any reply or observations.

# Procedure of reporting in Rule 13(2)

- (2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.
- (3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.
- (4) The report shall be in the form of a statement as specified in Form **ADT-4**.



# Procedure of reporting in Rule 13(3)

- In case the fraud involving less than Rs. 1 crore, the auditor shall report the matter to Audit Committee or the Board immediately but not later 9two days of his knowledge of the fraud.
- He shall report the following matters:
  - Nature of fraud with description,
  - Approximate amount involved and
  - Parties involved.

## ADT-4

- Full details of the suspected offence involving fraud (attach documents in support).
- Particulars of the officers or employees who are suspected to be involved in the commission of the offence, if any:
  - a) Name(s) :
  - b) Designation
  - c) If Director, his DIN
  - d) PAN
- Basis on which fraud is suspected
- Period during which the suspected fraud has occurred .
- Estimated amount involved in the suspected fraud.

## ADT-4

- Date of sending report to the Board or Audit committee as per rule 13(1)
- Date of reply received from Board or Audit committee, if any (and if so received attach copy thereof and give gist of the reply )
- Whether the auditor is satisfied with the reply of the Board or Audit committee. Yes \_\_\_\_\_  
No \_\_\_\_\_.
- Details of steps , if any, taken by the company in this regard; (Furnish full details with references)

# Reporting in cases of joint audits

## Para 111 of the Guidance Note

- Each of the joint auditor should individually comply with the requirements of this Guidance Note.
- where a suspected offence involving fraud is identified/noted by one of the joint auditors, such joint auditor should communicate the same to the other joint auditor(s).
- The reporting may be carried out by the joint auditor who identified/noted the suspected fraud or by any or all of the joint auditors together.
- When the reporting in Form ADT – 4 is carried out only by the joint auditor who identified/noted the suspected fraud, such joint auditor should provide a copy of the Form to the other joint auditors.

# Reporting on frauds detected by management or other persons and already reported

- Not to be reported again by the auditor., if identified by :
  - The cost auditor
  - Secretarial Auditor
  - Management through Vigil mechanism
- To be reported only if he is the first person to identify/note such fraud in the course of performance of his duty as auditor
- May be required to ensure that proper steps are being taken in that regard.

# THANK YOU

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