

Back to Basics – Fraud Definition (Indian Business)

Recently NFRA (National Financial Reporting Authority) issued a circular dated 26th June 2023 on Statutory Auditors' Responsibilities concerning the Fraud in a Company. As per this circular, the reference to the Companies Act 2013 has been used to define the word "Fraud"

Section 447 of the Companies Act 2013 is wide and states that, "fraud" in relation to affairs of a company or anybody 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"

According to **Black's Law Dictionary**, Fraud is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his/her detriment.

Section 17 of Indian Contract Act 1872, "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:— (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent.

Section 415 of the Indian Penal Code, defines Cheating as, Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

As per **Reserve Bank of India**, Master Circular on Frauds - Classification and Reporting RBI/2015-16/1 DCBR.CO. BPD. MC.No. 1/12.05.001/2015-16, In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:

a. Misappropriation and criminal breach of trust. b. Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts, and conversion of property. c. Unauthorised credit facilities extended for reward or for illegal gratification. d. Negligence and cash shortages. e. Cheating and forgery. f. Irregularities in foreign exchange transactions. g. Any other type of fraud not coming under the specific heads as above.

The rising numbers of Frauds across the world in many companies and all the legal forms of entities such as Individual, Private Companies, Public Companies, Limited Liability Partnerships, Joint Venture, Non-Government Organisation, and Trusts (Private and Public), require to look at the Fraud Prevention Controls, Fraud Risk Assessment, and Monitoring Tools to ensure that in case of Fraud incidence, the legal action and route available to protect the assets, and timely recovery of the loss from such an event and action is taken within the legal and internal framework, and controls are designed or relooked to ensure risk of fraud is mitigated and minimized.

Fraud Definition Summary

