CONCEPT OF FRAUD AND OFFENCES PUNISHABLE FOR FRAUD UNDER THE COMPANIES ACT, 2013

125

{Sections 447 and 448 of the Companies Act, 2013}

Synopsis

125.1 Concept of fraud and offences punishable for fraud **Appendix 125.1** List of offences punishable for fraud

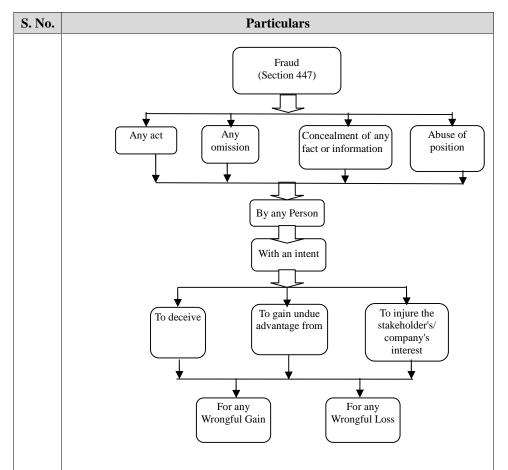
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Relevant Sections of the Act

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 7, 8, 34, 36, 38, 46, 56, 66, 75, 140, 206, 213, 229, 251, 339, 447 and 448

125.1 CONCEPT OF FRAUD AND OFFENCES PUNISHABLE FOR FRAUD

S. No.	Particulars	
CONCEPT OF FRAUD		
1.	The corporate sector is mainly regulated by the Companies Act, since different provisions have been provided in the Act for regulating the affairs of a company and the first time the concept of fraud has been inserted in the Companies Act, 2013.	
	Regardless of the definition used, certain characteristics are common to all types of frauds and these are:	
	1. It is a misrepresentation of a material fact.	
	2. It is made knowingly and deliberately.	
	3. It is made with the intent to deceive.	
	4. It relies on the misrepresentation by the victim.	
	5. It results in injury or damage to the victim.	
	Legal provisions have been made for preventing and curbing corporate frauds	
	under Section 447 of the Companies Act, 2013, and the fraud under the Companies Act, 2013 pursuant to explanation to section 447 is reproduced below:	
	$\Rightarrow \Rightarrow \Rightarrow$	



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.

It is noteworthy that the definition of fraud, given in Section 447 of the Act, is not comprehensive but inclusive and pertains to only the affairs of a company or body corporate.

While the term 'fraud' not only includes any 'act', but also 'the omission to act, concealment of any fact, and abuse of position by a person. Such act, omission or concealment, can pertain to any person himself or by him, with the connivance of any other person, in any manner.

The building blocks of a corporate fraud are briefly described below:

ANY ACT/OMISSION TO ACT

An act means to take action or to do something. Mere coming of an idea into mind to do a fraud is not fraud, until the idea is converted into an act. An act of omission is the failure to perform an act expected to be done by a person whereas the act of commission is doing an act that causes harm. According to



For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

COMPANY LAW Procedures & Compliances (in 2 vols.)