

**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	2203
Appendix 125.1 List of offences punishable for fraud	2220

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.	<p>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.</p> <p>Regardless of the definition used, certain characteristics are common to all types of frauds and these are:</p> <ol style="list-style-type: none"> 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. <p>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:</p> <p align="right">⇒ ⇒ ⇒</p>

S. No.	Particulars
	<div style="text-align: center;"> <pre> graph TD A[Fraud (Section 447)] --> B[Any act] A --> C[Any omission] A --> D[Concealment of any fact or information] A --> E[Abuse of position] B --> F[By any Person] C --> F D --> F E --> F F --> G[With an intent] G --> H[To deceive] G --> I[To gain undue advantage from] G --> J[To injure the stakeholder's/ company's interest] H --> K[For any Wrongful Gain] I --> K I --> L[For any Wrongful Loss] J --> L </pre> </div> <p>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.</p> <p>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.</p> <p>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.</p> <p>The building blocks of a corporate fraud are briefly described below:</p> <p>ANY ACT/OMISSION TO ACT</p> <p>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</p>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form DIR-2 (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	Forms an certificate in writing, on or before appointment, from the appointed director as Form DIR-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

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 \(in 2 vols.\)](#)