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Considerations when going Legal with a Corporate Fraud Case

■ **Amit Bansal**



Traditionally Indian organisations have been hesitant to pursue legal recourse in case of fraud owing to the slow pace of the judicial system in India, high litigation expenses, and the relatively incommensurate penalties provided for under the law.

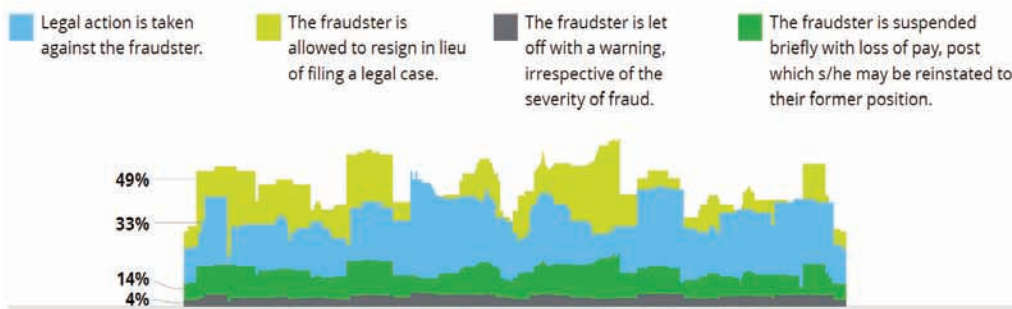
However, our recently released Deloitte India Corporate Fraud Perception Survey, Edition III indicates that this trend is now changing. Once the fraud was ascertained, the fraudster was allowed to resign in lieu of filing a legal case in the majority of cases (49%). However, a third of respondents indicated that they took legal action against the fraudster. The rest of the respondents either chose to suspend the fraudster briefly and/or let the fraudster off with a warning.

We believe this may be the result of the slew of legislations passed by the government

in recent years and efforts taken to resolve cases under them in a time-bound manner (the Insolvency and Bankruptcy Code is a case in point). In such a situation, it is essential to understand how to preserve evidence in a legally acceptable manner. In our experience, most internal fraud prevention units and internal audit teams prefer to work with third party experts for this activity as well as for quantification of losses.

To seek better outcomes from legal recourse to corporate fraud, organisations need to ensure that they are adequately prepared to support the case they intend to file. Below are some key considerations:

- Data including evidence should be forensically collected and secured immediately to prevent tampering.
- Conduct independent investigations and make a detailed forensic report (including formally recorded statements of perpetrators)



Source of the image: India Corporate Fraud Perception Survey, Edition III released by Deloitte India

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to help ascertain if it is worth the effort to pursue the matter legally.

- Identify the right legal forum for discussion such as a civil proceeding (under provisions of the Companies Act, 2013) or criminal proceeding (under the Indian Penal Code).

- If opting for a criminal case, an FIR should be filed at the jurisdictional police station prior to filing a complaint in court. It should include details of the fraud and perpetrators that will help the police carry out their independent investigation and provide evidence directly before the court.

There is also recognition among corporates of the fact that a change in culture towards zero tolerance to fraud is essential to prevent future instances of fraud. While institutional measures are necessary to impart education and awareness among employees, it is also essential that line managers create an environment that is conducive for their teams to raise concerns without fearing retaliation or bias. In our experience, open discussions within teams on misconduct and malpractice, alongside managers living and demonstrating ethical behaviors can accelerate the creation of an ethical enterprise. [W](#)



Amit Bansal is a Partner and leads Dispute and Litigation Advisory as well as Antitrust and Competition Advisory within Deloitte's Forensic practice in India. He has an overall experience of over 23 years across large organisations, mainly focused on economic and financial analysis and investigating economic and financial crimes. He has also worked on some large and complex commercial disputes cutting across sectors, predominantly in infrastructure, construction, oil and gas, real estate and mines and minerals. He is a regular speaker in various public and private forums covering aspects like sectoral issues and strengthening ethical practices in business.