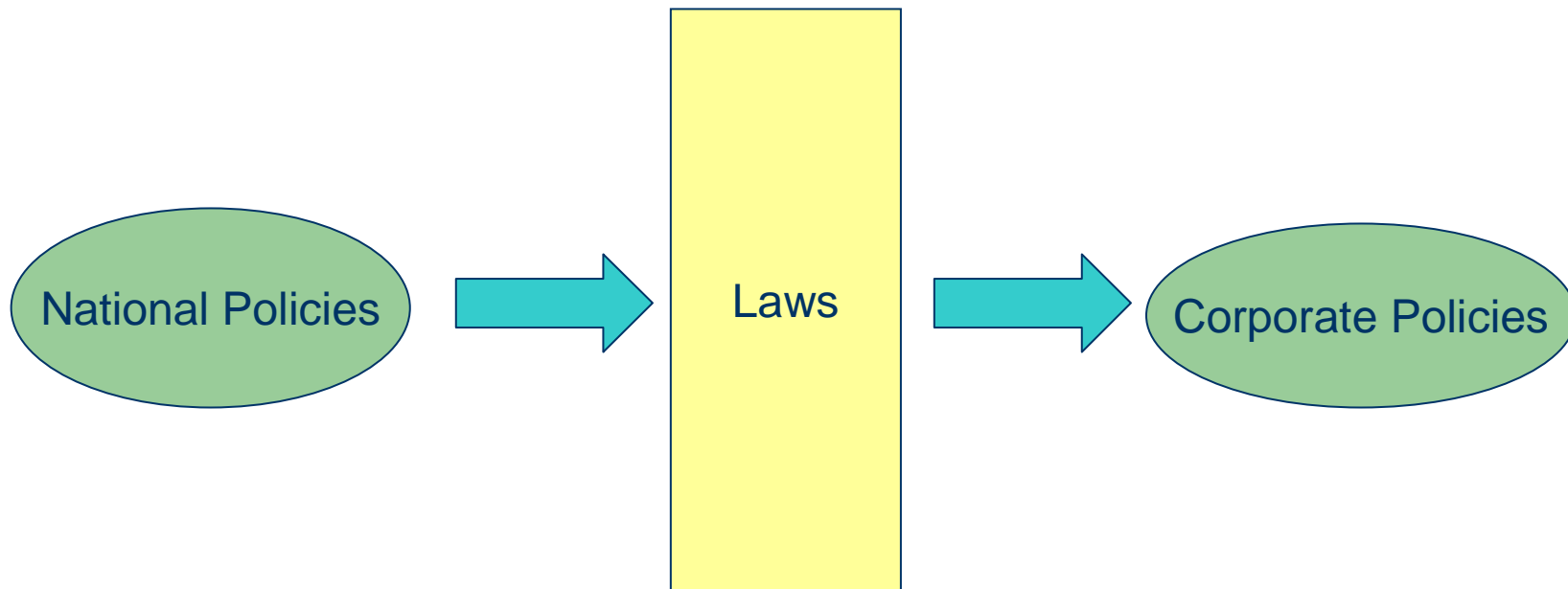


ITA 2008 and Implications on Corporate Governance

Naavi

April 24, 2010

Policies and Laws are interdependent



National Policies dictate framing of laws

- Need for E Commerce Promotion dictated enactment of ITA 2000
- Need for Cyber Security dictated amendments to ITA 2000 and ITA 2008

Laws in turn dictate corporate policies

- To be law compliant is the fundamental rule of business
 - Ethical companies never ignore laws to make a quick buck
 - Company secretaries and Independent Directors are the custodians of this requirement on behalf of the Shareholders and the Government
 - Clause 49 of SEBI Listing tries to achieve this as part of the Corporate Governance Standard

Clause 49 Certificate..attached to Annual Reports of listed companies..

- ..” these statements present a true and fair view of the company’s affairs and are in compliance with existing accounting standards, applicable laws and regulations”
 - Provided by the CEO and CFO
 - Have we complied with the applicable law?

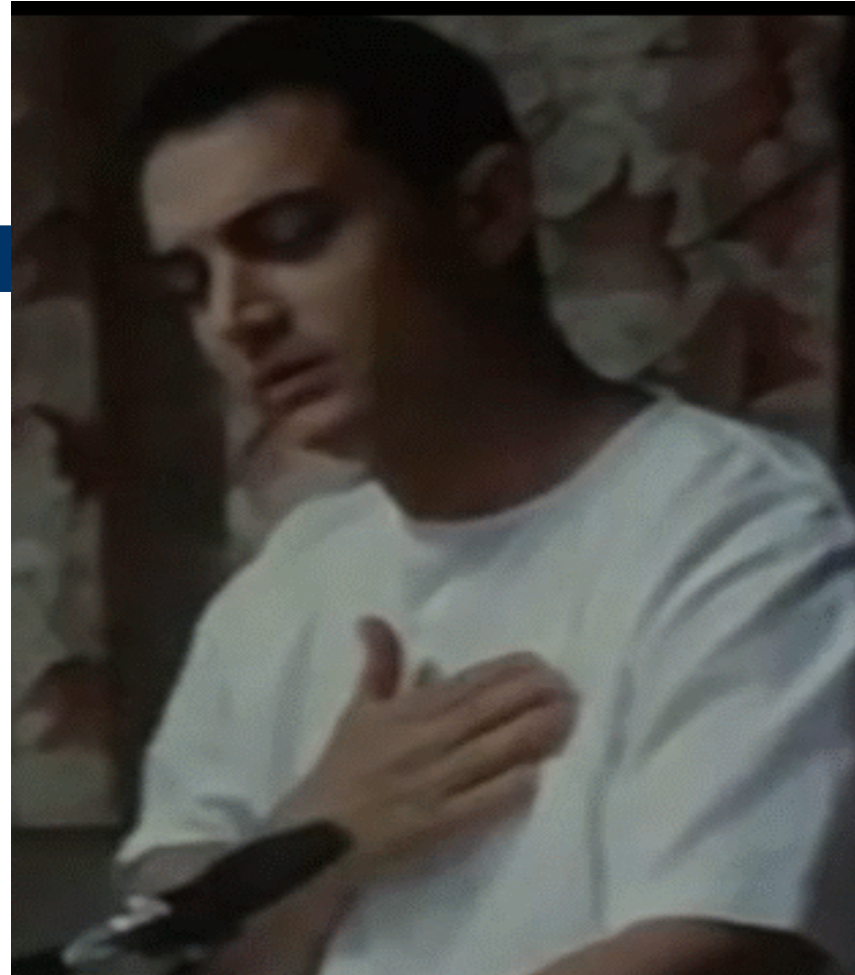


A Reflection...

Are we complying with ITA 2008?....Do we face any penalty for non compliance?

All Iz Well

We are Very Optimistic..



....Is It a correct perception?....



Rs 20 Crore Fraud in a leading Company

- An employee gives instructions to the Bank
 - ..Please transfer Rs To Account
 - And the Bank obliges..for three years..for a total of Rs 20 crores..on several occasions..some debits being as high as Rs 1.2 cores!
 - Just last year the Company had assured its shareholders... All Iz Well...
 - And given a certificate..



Liability on Banks for Phishing

- Umashankar Vs ICICI Bank
 - Adjudicator of Tamil Nadu
- Nikhil Futan Vs HDFC Bank
 - Consumer Court Mumbai
- Vidyashankar Vs Bank of India
 - Banking Ombudsman (South)
 - Financial Liabilities for non compliance of ITA 2008
 - Could be worse if criminal penalties are also imposed as in the case of baazee.com



Hundreds of Phishing Frauds in a Bank..

...Caused due to non compliance of ITA 2008 and RBI guidelines by Banks..

...What could be the implications on the Directors?

This is not an issue of One company..one industry..

- Every Company faces a fraud risk.. And they also face the Cyber Crime Risk...
 - Most companies today do not assess Cyber Crime Risks and cover them appropriately.
 - Independent Directors fail to recognize this deficiency as part of Internal audit process
 - “A Risk not Assessed is Risk Not Covered”
 - Such Directors may be guilty of gross negligence

Action Plan..

Assess Risks

Mitigate Risks

Certify Compliance

Naavi's ITA 2008 Risk Assessment Steps





The risk of Vicarious Liabilities

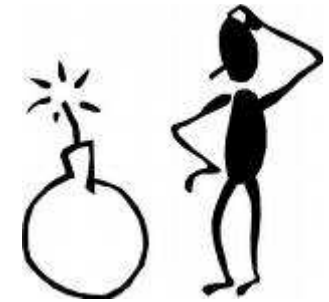
- Any Non Compliance can create a “Vicarious Liability on the Organization and its Executives” who are otherwise innocent..though negligent.

Sec 85 of ITA 2008

- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a Company,
 - every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:
 - **Provided** that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

Sec 85 of ITA 2008

- ... where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place
 - with the consent or connivance of, or
 - is attributable to any neglect
 - on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.



Let's Ask Ourselves

Is my company protected
against Cyber Crime Risks?
...and liabilities arising there
from?

Red Alert

To CEOs and Directors of Listed
Companies

There is No Satisfactory
Compliance of Clause
49..without ITA 2008
compliance

Need of the Hour...

- *“Be Aware..
Comply
and
Feel Secure”*

That is Corporate Governance



Naavi's ITA 2008 Emergency Help Center for Corporate Directors and CEOs

Call Now or E-Mail: 91-9343554943 : naavi@vsnl.com

Thank You

Naavi

