

## Inspection, Inquiry and Investigation

### 1. Introduction

It became imperative for the Central Government to assume certain powers to investigate the affairs of the company in appropriate cases particularly where there was reason to believe that the business of the company was being conducted with the intent to defraud its creditors or members or for a fraudulent or unlawful purpose, or in any manner oppressive of any of its members. Chapter XIV contains Sections 206 to 229 of the Companies Act, 2013; deals with the provisions relating to Inspection, Inquiry and Investigation into the affairs of company.

#### **POWERS GIVEN UNDER COMPANIES ACT, 2013**

Authorities	Powers
Registrar under sections 206, 207, 208 & 209	Call for information, inspection of books of account, books, papers and explanations and order for inquiry in section 206, submission of inspection report in 208, Search and seizure in 209, Shall have all the powers as are vested in a civil court in section 207.
Inspector under sections 206, 207, 208, 209 & 216	call for the books of account and other books and papers under section 206, make an inspection or inquiry under section 206, Shall have all the powers as are vested in a civil court in section 207, submit inspection report in section 208, Search and seizure of documents in 209, To investigate on matters relating to company and its membership for determining ownership of company in section 216.
Central Government under sections 206, 210, 211, 212, 216 & 224	May authorize any statutory authority to carry out the Inspection of books of accounts of company in 206, Investigate into affairs of company in 210, Appointment of inspectors to investigate into affairs of the company and to report there on in section 210, Establishment of SFIO in 211, Assignment the investigation into the affairs of company by SFIO in section 212, Appointment of inspector to investigate on matters relating to company and its membership for determining ownership of company in section 216, Actions may be taken in

	pursuance of inspector's report in section 224
Regional director in section 206	Appoint inspector for inspection of books and papers of company in section 206
Tribunal under section 213, 221, 222	Pass an order for investigation into company's affairs in other cases under section 213, for freezing of assets of company on inquiry and investigation in section 221, for imposing restrictions upon securities. In section 222

## **2. Power to call for information, inspect books and conduct inquiries (Section 206 of the Companies Act, 2013)**

Section 206 of the Companies Act, 2013 provides for the power to call for information, inspect books and conduct inquiries.

<b>Concerned authorities</b>	<b>In the given circumstances</b>	<b>Have following Powers</b>
Registrar under section 206 (1)	On a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary	may by a written notice require the company— (a) to furnish in writing such information or explanation; or (b) to produce such documents,
Registrar under section 206 (3)	(a) If no information or explanation is furnished, or (b) If on an examination of the documents furnished, he is of the opinion that the information or explanation furnished is inadequate; or (c) If he is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and the information or documents do not disclose a full and fair statement of the information required.	may by another written notice call on the company to produce for his inspection such further books of account, books, papers and explanations as he may required
Registrar under section 206(4)	(1) on the basis of information available with or furnished to him; or (2) on a representation made to	may call on the company to furnish in writing any information or explanation on matters specified in the

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	him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act; or (3) the grievances of investors are not being addressed,	order and carry out such inquiry
Central Government [Section 206 (6)]	if is satisfied that the circumstances so warrant [Section 206 (5)]	direct inspection of books and papers of a company by an inspector appointed by it for the purpose
Central Government [Section 206 (6)]	having regard to the circumstances	by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies [Section 206 (6)].

According to this section:

- (i) **Power of the Registrar to call for information, explanation or documents:** According to section 206(1) of the Companies Act, 2013, where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—
- (a) to furnish in writing such information or explanation; or
  - (b) to produce such documents,
- within such reasonable time, as may be specified in the notice.
- (ii) **Duty of the company and its officers:** On the receipt of a notice under sub-section (1) of section 206, it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar [Section 206 (2)].

**Duty of past officers of the company:** According to the proviso to sub-section (2) of section 206, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called

upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

**(iii) Additional written notice by the Registrar [Section 206 (3)]:** The Registrar may by another written notice call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

- (a) If no information or explanation is furnished to the Registrar within the time specified under Section 206 (1); or
- (b) If the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate; or
- (c) If the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and the information or documents do not disclose a full and fair statement of the information required.

Provided that, before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

**(iv) Inquiry by the Registrar [Section 206 (4)]:**

- (a) The Registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard, if the Registrar is satisfied:
  - (1) on the basis of information available with or furnished to him; or
  - (2) on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act; or
  - (3) the grievances of investors are not being addressed,
- (b) Before calling the company to furnish in writing any information or explanations and carrying out inquiry, the Registrar has to inform the company of the allegations made against it by a written order.
- (c) The Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section.
- (d) It is further provided that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

- (v) **Inspection by Central Government:** Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose [Section 206 (5)].
- (vi) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies [Section 206 (6)].
- (vii) **Failure to furnish information:** If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to 1 lakh rupees and in the case of a continuing failure, with an additional fine which may extend to 500 rupees for every day after the first during which the failure continues [Section 206 (7)].

### **3. Conduct of inspection and inquiry (Section 207 of the Companies Act, 2013)**

Section 207 of the Companies Act, 2013 provides for the conduct of inspection and inquiry as follows:

- (i) **Duty of director, officer or employee [Sub-Section (1)]:** Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company:
  - (a) to produce all such documents to the Registrar or inspector; and
  - (b) to furnish him with such statements, information or explanations in such form as the Registrar or inspector may require; and
  - (c) to render all assistance to the Registrar or inspector in connection with such inspection.
- (ii) **Powers of the Registrar or inspector [Sub-section (2) and (3)]:**
  - (a) The Registrar or inspector making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—
    - (1) make or cause to be made copies of books of account and other books and papers; or
    - (2) place or cause to be placed any marks of identification in such books in token of the inspection having been made.
  - (b) The Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

- (1) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;
- (2) summoning and enforcing the attendance of persons and examining them on oath; and
- (3) inspection of any books, registers and other documents of the company at any place.

**(iii) Penalty for Contravention [sub-section (4)]:** If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to 1 year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees.

If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

#### **4. Report on inspection made (Section 208 of the Companies Act, 2013)**

Section 208 of the Companies Act, 2013 provides for the submission of the report on inspection made. According to this section:

The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

#### **5. Search and seizure (Section 209 of the Companies Act, 2013)**

Section 209 of the Companies Act, 2013 provides for search and seizure. According to this section:

- (i) Circumstances for seizure [Sub-section (1)]:** Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of
- (a) a company, or relating to
  - (b) the key managerial personnel or
  - (c) any director or

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- (d) auditor or
- (e) company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted,
- (f) he may, after obtaining an order from the Special Court for the seizure of such books and papers,—
  - (1) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and
  - (2) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

**(ii) Period of seizure [Sub-section (2)]:**

*Original period of seizure:* The Registrar or inspector shall return the books and papers seized under sub-section (1), as soon as may be, and in any case not later than 180<sup>th</sup> day after such seizure, to the company from whose custody or power such books or papers were seized.

*Further period of seizure:* The books and papers may be called for by the Registrar or inspector for a further period of 180 days by an order in writing if they are needed again.

**(iii) Taking of copies, placing identification marks [second proviso to sub-section (2)]:**

The Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

**(iv) Applicability of the provisions of the Code of Criminal Procedure, 1973 [Sub-section (3)]:** The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, *mutatis mutandis*, to every search and seizure made under this section.

**Example:** A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 10 A.M. on 1<sup>st</sup> July 2017 and the ROC entered the premises at 10.30 A.M. for the search. Examine the powers of the Registrar to seize the books of the company.

**Answer:** According to the provisions, Registrar may enter and search the place where such books or papers are kept and seize them only after obtaining an order from the Special Court.

Since in the given question, Registrar entered the premises for the search and seizure of books of the company without obtaining an order from the Special Court, he is not authorised to seize the books of the Mac Trading Limited.

## 6. Investigation into affairs of company (Section 210 of the Companies Act, 2013)

Section 210 of the Companies Act, 2013 provides for Investigation into affairs of company. According to this section:

- (i) **Investigation in the opinion of Central Government:** Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—
  - (a) on the receipt of a report of the Registrar or inspector under section 208;
  - (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
  - (c) in public interest,
 it may order an investigation into the affairs of the company. [Sub-section (1)]
- (ii) **Investigation on the order by a court or the Tribunal:** Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company [Sub-section (2)].
- (iii) **Appointment of inspectors:** For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct [Sub-section (3)].

According to the *Companies (Inspection, investigation and inquiry) Rules, 2014*:

- (i) The Central Government may before appointing an inspector under sub-section (3) of Section 210, require the applicant to give a security not exceeding 25,000 rupees for payment of the costs and expenses of investigation as per the criteria given in the said rule.
- (ii) Further, the above referred security shall be refunded to the applicant if the investigation results in prosecution.

**Example:** Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted? Elaborate.

**Answer:** The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.



## 7. Establishment of Serious Fraud Investigation Office (Section 211 of the Companies Act, 2013)

Section 211 of the Companies Act, 2013 provides for the establishment of Serious Fraud Investigation Office as under:

- (i) **Setting up of Serious Fraud Investigation Office (SFIO) [Section 211 (1)]:** The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company.
- (ii) **Continuation of earlier SFIO:** Until the SFIO as mentioned above is established, the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.
- (iii) **Composition of SFIO [Section 211 (2)]:** The SFIO shall be:
  - (a) Headed by a Director, and
  - (b) Consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—



- (iv) **Appointment of Director:** The Central Government shall, by notification, appoint a Director in the SFIO, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs [Section 211 (3)].
- (v) **Appointment of Experts Officers & Employees:** The Central Government may appoint such experts and other officers and employees in the SFIO as it considers necessary for the efficient discharge of its functions under this Act [Section 211 (4)].

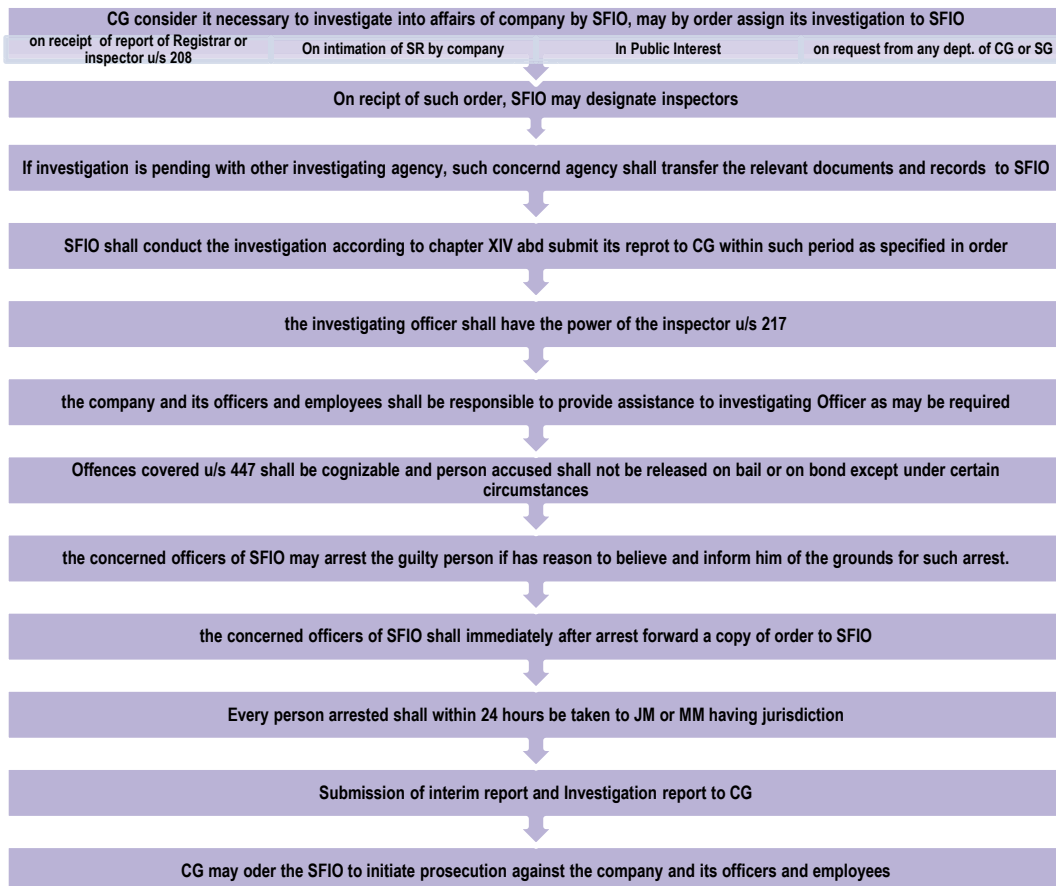
According to Rule 3 of the *Companies (Inspection, Investigation and Inquiry) Rules, 2014*, the Central Government may appoint persons having expertise in the fields of investigations, cyber forensics, financial accounting, management accounting, cost accounting and any other fields as may be necessary for the efficient discharge of Serious Fraud Investigation Office (SFIO) functions under the Act.

- (vi) **Terms and conditions of service:** The terms and conditions of service of Director, experts, and other officers and employees of the SFIO shall be such as may be prescribed [Section 211 (5)].

The terms and conditions of service of the above mentioned officers have been laid down in the Rule 4 of the *Companies (Inspections, Investigations and Inquiry) Rules, 2014*.

## 8. Investigation into affairs of Company by Serious Fraud Investigation Office (Section 212 of the Companies Act, 2013)

Section 212 of the Companies Act, 2013 provides for Investigation into affairs of Company by the Serious Fraud Investigation Office (SFIO). According to this section:



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- (i) According to section 212(1), without prejudice to the provisions of section 210, where the Central Government -
- (a) on receipt of a report of the Registrar or inspector under section 208;
  - (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
  - (c) in the public interest; or
  - (d) on request from any Department of the Central Government or a State Government, is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO, the Central Government may, by order, assign the investigation into the affairs of the said company to the SFIO.

On receipt of such order, the Director, SFIO may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

- (ii) Where any case has been assigned by the Central Government to the SFIO for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act. In case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to SFIO [Sub section (2)].
- (iii) Where the investigation into the affairs of a company have been assigned by the Central Government to SIFO, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) and submit its report to the Central Government within such period as may be specified in the order [Sub section (3)]
- (iv) The Director, SFIO shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217 [Sub section (4)]
- (v) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation [Sub section (5)]
- (vi) As per sub-section (6), offences covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—
- (a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

Provided further that the Special Court shall not take cognizance of any offence referred in point (vi) except upon a complaint in writing made by—

- (a) the Director, SFIO; or
  - (b) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.
- (vii) The limitation on granting of bail specified in sub section (6) above is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail [Sub section (7)].
  - (viii) If the Director, Additional Director or Assistant Director of SFIO authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. [Sub section (8)]
  - (ix) The Director, Additional Director or Assistant Director of SFIO shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the SFIO in a sealed envelope, in such manner as may be prescribed and the SFIO shall keep such order and material for such period as may be prescribed. [Sub section (9)]
  - (x) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction. The period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court. [Sub section (10)]
  - (xi) The SFIO shall submit an interim report to the Central Government, if the Central Government so directs [Sub section (11)].
  - (xii) The SFIO shall submit the investigation report to the Central Government on completion of the investigation [sub section (12)].
  - (xiii) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court [Sub section (13)].
  - (xiv) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected

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with the affairs of the company [Sub section (14)].

- (xv) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 [Sub section (15)].
- (xvi) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by SFIO under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed [Sub section (16)].
- (xvii) In case SFIO has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the SFIO [Sub section (17) (a)].
- (xviii) The SFIO shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law [Sub section (17) (b)].

## 9. Investigation into company's affairs in other cases (Section 213 of the Companies Act, 2013)

Section 213 deals with the Investigation into Company's Affairs in other cases. According to this section:

**Cognizance of offence by Tribunal:** The Tribunal may,—

- (a) on an application made by—
  - (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or
  - (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or
- (b) **Order by tribunal:** On an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—
  - (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

- (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
- (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

- (c) **Punishment in case of guilty:** If after investigation, it is proved that—
- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or
  - (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

## **10. Security for payment of costs and expenses of investigation (Section 214 of the Companies Act, 2013)**

Section 214 of the Companies Act, 2013 provides for security for payment of costs and expenses of investigation as under:

Where an investigation is ordered by the Central Government in pursuance of clause (b) of sub-section (1) of section 210, or in pursuance of an order made by the Tribunal under section 213, the Central Government may before appointing an inspector under sub-section (3) of section 210 or clause (b) of section 213, require the applicant to give such security not exceeding 25,000 rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation. Such security shall be refunded to the applicant if the investigation results in prosecution.

## **11. Firm, body corporate or association not to be appointed as inspector (Section 215 of the Companies Act, 2013)**

Section 215 of the Companies Act, 2013 provides that no firm, body corporate or other association shall be appointed as an inspector.

## **12. Investigation of ownership of company (Section 216 of the Companies Act, 2013)**

Section 216 of the Companies Act, 2013 provides for Investigation of ownership of company as under:

- (i) As per sub section (1), where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—
  - (a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
  - (b) who are or have been able to control or to materially influence the policy of the company.
- (ii) Without prejudice to its powers under sub-section (1), the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1). [Sub-section (2)]
- (iii) While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures [Sub-section (3)]
- (iv) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation [Sub-section (4)]

## **13. Procedure, powers, etc., of inspectors (Section 217 of the Companies Act, 2013)**

Section 217 of the Companies Act, 2013 provides for procedure, powers, etc., of inspectors as under:

- (i) As per sub- section (1), it shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person —

- (a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and
  - (b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
- (ii) The inspector may require any body corporate, other than a body corporate referred in point (i) to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation [Sub section (2)].
- (iii) The inspector shall not keep in his custody any books and papers produced under point (i) or point (ii) for more than 180 days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced [Sub section (3)].

However, the books and papers may be called for by the inspector if they are needed again for a further period of 180 days by an order in writing.

- (iv) As per sub-section (4), an inspector may examine on oath—
- (a) any of the persons referred to in point (i); and
  - (b) any other person with the prior approval of the Central Government,
- in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally.
- However, in case of an investigation under section 212, the prior approval of Director, SFIO shall be sufficient under point (b) above (instead of the Central Government).
- (v) As per sub-section (5), notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government making an investigation under this chapter, shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—
- (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;
  - (b) summoning and enforcing the attendance of persons and examining them on oath; and



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- (c) inspection of any books, registers and other documents of the company at any place.
- (vi) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees [Sub section (6) (i)].

If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company [Sub section (6) (ii)].

- (vii) The notes of any examination under sub section (4) above, shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him [Sub section (7)].
- (viii) As per sub-section (8), if any person fails without reasonable cause or refuses—

- (a) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under point (i) or point (ii) to produce;
- (b) to furnish any information which is his duty under point (ii) to furnish;
- (c) to appear before the inspector personally when required to do so under point (iv) or to answer any question which is put to him by the inspector in pursuance of that point; or
- (d) to sign the notes of any examination referred to in sub section (7) above,

he shall be punishable with imprisonment for a term which may extend to 6 months and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, and also with a further fine which may extend to 2,000 rupees for every day after the first during which the failure or refusal continues.

- (ix) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require [Sub section (9)].
- (x) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State [Sub section (10)].

- (xi) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request [Sub section (11)].

Provided that, the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

According to Rule 6 of the *Companies (Inspection, investigation and inquiry) Rules, 2014*, the 'letter of request', in terms of section 217, shall be transmitted in such manner as specified by the Ministry of Corporate Affairs.

- (xii) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within 30 days or such extended time as the court may allow for further action [Sub section (12)].

Provided that the evidence taken or collected as above or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.

#### **14. Protection of employees during investigation (Section 218 of the Companies Act, 2013)**

Section 218 of the Act deals with the protection of Employees during Investigation.

- (1) **Approval of tribunal to take action against the employee:** Notwithstanding anything contained in any other law for the time being in force, if—
- (a) **during the course of any investigation of the affairs** and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or
  - (b) **during the pendency of any proceeding** against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, such company, other body corporate or person proposes—
    - (i) to discharge or suspend any employee; or
    - (ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
    - (iii) to change the terms of employment to his disadvantage,
- the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.
- (2) **Action against employee:** If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.
- (3) **Appeal:** If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.
- (4) **Final and Binding order:** The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
- (5) **Over-riding effect:** For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

Tribunal's Objection On the action Proposed by Company/ Body Corporate/ Person	Objection not Received	Company can terminate / punish the employee	
	Objection Received	Company / Employee can apply to the Appellate Tribunal	The decision of Appellate Tribunal shall be Final.

## 15. Powers of inspector

### 1. To conduct investigation into affairs of related companies, etc. (Section 219 of the Companies Act, 2013)

Section 219 of the Companies Act, 2013 provides for power of inspector to conduct investigation into affairs of related companies, etc. as under:

- (i) **Investigation into affairs of related companies:** If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—
- (a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
  - (b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
  - (c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
  - (d) any person who is or has at any relevant time been the company's managing director or manager or employee.
- (ii) **Report of inspector:** The inspector shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

### 2. Seizure of documents by inspector (Section 220 of the Companies Act, 2013)

Section 220 of the Companies Act, 2013 provides for seizure of documents by inspector as under:

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- (i) **Seizure of books and papers [Sub section (1)]:** Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may —
  - (a) enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and
  - (b) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.
- (ii) **Time period for keeping books and papers [Sub section (2)]:** The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized.
- (iii) **Extracts of books and papers:** The inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.
- (iv) **Application of provisions of Cr. PC.:** The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply *mutatis mutandis* to every search or seizure made under this section.

### 3. Freezing of Assets of Company on Inquiry and Investigation (Section 221 of the Companies Act, 2013)

Section 221 of the Act deals with the Freezing of Assets of Company on Inquiry and Investigation. According to this section:

- (i) **Order of the tribunal:** Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as

may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

- (ii) **Punishment in case of contravention of order of tribunal:** In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

#### **4. Imposition of Restrictions upon Securities (Section 222 of the Companies Act, 2013)**

Section 222 of the Act deals with the Imposition of Restrictions upon Securities. According to this section:

- (i) **Tribunal may by order put restrictions upon securities:** Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.
- (ii) **Punishment in case of contravention to an order:** Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

#### **16. Inspector's report (Section 223 of the Companies Act, 2013)**

Section 223 of the Companies Act, 2013 lays down the following provisions in respect of the Inspector's report on investigation conducted under this chapter:

- (i) **Submission of interim report and final report [Sub section (1)]:** An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
- (ii) **Report to be writing or printed [Sub section (2)]:** Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.

- (iii) **Obtaining copy or report [Sub section (3)]:** A copy of the above report may be obtained by making an application in this regard to the Central Government.
- (iv) **Authentication of report [Sub section (4)]:** The report of any inspector appointed under this Chapter shall be authenticated either—
  - (a) by the seal, if any, of the company whose affairs have been investigated; or
  - (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872,and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (v) **Exceptions [Sub section (5)]:** Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

### **17. Actions to be taken in pursuance of inspector's report (Section 224 of the Companies Act, 2013)**

Section 224 of the Companies Act, 2013 provides the following provisions in respect of the actions to be taken in pursuance of inspector's report:

- (i) If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution [Sub section (1)].
- (ii) As per sub-section (2), if any company or other body corporate is liable to be wound up under this Act or under the Insolvency and Bankruptcy Code, 2016 and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—
  - (a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;
  - (b) an application under section 241; or
  - (c) both.

- (iii) As per sub-section (3), if from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter—
  - (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or
  - (b) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.
- (iv) The Central Government, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3) [Sub section (4)].
- (v) Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

## **18. Expenses of investigation (Section 225 of the Companies Act, 2013)**

Section 225 of the Companies Act, 2013 lays down the following provisions in respect of expenses of investigation:

- (i) As per sub-section (1), the expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter (Chapter XIV-Inspection, Inquiry and Investigation) other than expenses of inspection under section 214 (Security for payment of costs and expenses of investigation) shall be defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely:—
  - (a) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;



- (b) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings;
- (c) unless, as a result of the investigation, a prosecution is instituted under section 224,—
  - (1) any company, body corporate, managing director or manager dealt with by the report of the inspector; and
  - (2) the applicants for the investigation, where the inspector was appointed under section 213,to such extent as the Central Government may direct.
- (ii) Any amount for which a company or body corporate is liable under clause (b) above shall be a first charge on the sums or property mentioned in that clause [Sub section (2)].

### **19. Voluntary Winding up of Company, etc., Not to Stop Investigation Proceedings (Section 226 of the Companies Act, 2013)**

Section 226 of the Companies Act, 2013 provides the following provisions:

An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

- (a) an application has been made under section 241;
- (b) the company has passed a special resolution for voluntary winding up; or
- (c) any other proceeding for the winding up of the company is pending before the Tribunal.

Where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit.

Nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.

### **20. Legal Advisers and bankers not to disclose certain information (Section 227 of the Companies Act, 2013)**

Section 227 of the Companies Act, 2013 provides for non-disclosure of certain information by certain persons.

Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

- (a) **by a legal adviser**, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) **by the bankers** of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

### **21. Investigation etc. of foreign companies (Section 228 of the Companies Act, 2013)**

Section 228 of the Companies Act, 2013 provides for Investigation etc. of foreign companies. According to this section:

The provisions of this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) shall apply *mutatis mutandis* to inspection, inquiry or investigation in relation to foreign companies.

### **22. Penalty for furnishing false statement, mutilation, destruction of documents (Section 229 of the Companies Act, 2013)**

Section 229 of the Companies Act, 2013 lays down the following penalty for furnishing false statement, mutilation, destruction of documents:

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
- (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
- (c) provides an explanation which is false or which he knows to be false,
- (d) he shall be punishable for fraud in the manner as provided in section 447.

## RELEVANT AMENDMENTS

**1. Enforcement of Section 212(8), (9), & (10) vide Notification S.O. 2751(E) dated 24<sup>th</sup> of August, 2017**

The Central Government notified the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013 with effect from 24<sup>th</sup> day of August, 2017.

**2. Enforcement of the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 Vide Notification G.S.R. 1062(E) dated 24<sup>th</sup> of August 2017**

In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the Companies Act, 2013, Central Government enforced the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.

According to the Rule where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.

**The Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017**

- a **In case of other than government companies/foreign companies:** Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.
- b **Competant authority:** The Director SFIO shall be the competent authority for all decisions pertaining to arrest.
- c **In case of Government Company /foreign company:** Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry

concerned, by the arresting officer.

- d **Serving of Arrest order to arrestee:** The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.
- e **Forwarding of copy of arrest order and other documents:** The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.
- f **Maintenance of arrest order:** An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
- g **Entry in arrest register:** The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
- h **Preservation of copy of arrest order:** The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years  
a) from the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.
- i **Applicability of provision of Cr.P.C:** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

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### Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment	Status
Amendment of section 216.	In section 216 of the principal Act, in sub-section (1),— (i) in clause (b), for the word "company", the words "company; or" shall be substituted; (ii) after clause (b), the following clause shall be inserted, namely:— "(c) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company."	Not notified till 30 <sup>th</sup> April, 2018
Amendment of section 223.	In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.	Notified till 30 <sup>th</sup> April, 2018.