

COMPANIES ACT, 2013

**INSPECTION, INQUIRY
AND
INVESTIGATION**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

INSPECTION, INQUIRY AND INVESTIGATION

Introduction

Shareholders have been vested with various rights including the right to elect directors. However, shareholders are often ill-equipped to exercise effective control over the affairs of companies, and, particularly in companies whose shareholders are widely scattered, the shareholders are, by and large, sleeping and passive partners, and the affairs of such companies are managed to all intents and purposes, by its Board of directors to the exclusion of a predominant majority of shareholders. Such a situation leads to abuse of power by persons in control of the affairs of company. It became, therefore, 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 of the affairs of company.

Investigation within the meaning of the relevant provisions of the Act is a form of probe; a deeper probe; into the affairs of a company. It is a fact finding exercise. The main object of investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide the action to be taken. The said expression also includes investigation of all its business affairs—profits and losses, assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too.

Power of the Registrar to call for information and inspect documents (Section 206)

Obligation of the company to provide information, explanations and documents as the Registrar may direct

On the basis of scrutiny of any document filed by a company or

any information received if the Registrar forms the opinion that any further information, explanation or any further document relating to company is necessary, he may by a written notice require the company:

- furnish in writing such information or explanation; or
- to produce such documents.

The information, explanation or documents must be provided within a reasonable time as specified in the notice. The responsibility for compliance with this obligation is on the company and its officers who shall do so to the best of their knowledge and power. However, the obligation to provide information or explanation relating to any past period shall be on an officer who had been in the employment of the company during such period and if so called upon by the Registrar by means of a notice.

Power of the Registrar to inspect books, paper, documents, etc.

In the following situations, the Registrar may require the company by a written notice to produce for his inspection further books of account, books, paper and explanations at specified time and place:

- On company's failure to furnish information or explanation within the time specified in the notice under Section 206(1);
- On examination of documents, the Registrar is of the opinion that information or explanation furnished is inadequate;
- On scrutiny, the Registrar considers that an unsatisfactory state of affairs exists in the company and does not disclose full and fair information.

Before serving a notice under section 206(3), the Registrar shall record in writing the reasons for issuing such notice.

Power of the Registrar to conduct inquiry

- (i) Grounds for conduct of inquiry

On the basis of the information available or furnished or representations made by any person, the Registrar is satisfied that: (a) the business of the company is being carried on for a fraudulent or unlawful purpose, or not in compliance with the provisions of this Act; or (b) Investor's grievances are not being addressed, the Registrar may after informing the company of the allegations made against it, require through a written order to furnish in writing any information or

explanation within the specified time. Thereupon, the Registrar may conduct such inquiry as he deems fit after giving the company a reasonable opportunity of being heard.

- (ii) Central Government's powers to direct the Registrar or an Inspector to conduct inquiry

If the Central Government is satisfied that the circumstances so warrant, it may direct the Registrar or an Inspector appointed for the purpose to conduct an inquiry under this sub-section.

- (iii) Liability of Officers for fraud

Where the 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 provided in Section 447.

Meaning of Fraud

Explanation (i) to Section 447 has defined fraud in relation to affairs of a company or any body corporate to include, 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.

'Wrongful gain' in terms of Explanation (ii), means "the gain by unlawful means of property to which the person gaining is not entitled".

On the other hand, explanation (iii) to section 47 has defined "wrongful loss" to mean the loss by unlawful means of any property to which the person losing is legally entitled".

Power of the Central Government to direct inspection of books etc.

Having regard to the circumstances, the Central Government may take either of the following actions:

- (i) It may direct an Inspector to inspect books and papers of a company;
- (ii) It may, by a general or special order, authorize any statutory authority to carry out inspection of books of accounts of a company or class of companies.

Punishment for non-compliance

Failure by the company to furnish any information or explanation or any documents required under section shall make the company and every officer who is in default liable to a fine which may extend to one lakh rupees and in case of a continuing failure with an additional fine of five hundred rupees for everyday after the first during which the failure continues.

Conduct of Inspection and Inquiry (Section 207)

- (i) *Duty of every director and officer of the company to render assistance to the Registrar or Inspector*

It shall be duty of every director, officer or other employee of the company (a) to produce books of account, books and other papers as the Registrar or Inspector may call under Section 206 and (b) to furnish him such statements, information or explanations as the Registrar or Inspector may require and (c) to render all assistance in connection with such inspection.

- (ii) *Right of Registrar or Inspector to take copies of books of account*

The Registrar or Inspector making an inspection or inquiry under section may do the following in the course of inspection or inquiry:

- (a) to make copies of books of account and other books and papers; or
- (b) to place marks of identification on the books in token of inspection having been made.

- (iii) *Registrar or Inspector to have the powers of civil court*

In respect of the following, the Registrar or Inspector conducting inspection or inquiry shall have the powers of a civil court as provided in the Civil Procedure Code, 1908 while trying a suit.

- (a) the discovery and production of books of account and other documents at the specified time and place;
- (b) summoning or enforcing attendance of persons and examining them on oath; and
- (c) inspecting any books, registers and other documents of the company at any place.

Punishment for disobeying the direction

Any director or officer of the company disobeying the directions issued by the Registrar or the Inspector under section 207 shall be punishable with imprisonment extending to one year and a fine of not less than twenty-five thousand rupees but which may extend to one lakh rupees.

On and from the date on which a director or officer of the company has been convicted of an offence under Section 207, he shall be deemed to have vacated his office and on such vacation of office, he shall be disqualified from holding office in any company.

Reporting by Registrar on Inspection or Inquiry (Section 208)

After the inspection of books of account or inquiry under Section 206 and other books and papers under section 207, the Registrar shall submit a written report to the Central Government. The report may recommend the need for further investigation alongwith reasons in support.

Search and Seizure (Section 209)

On the basis of information in his possession, if the Registrar or Inspector has reasonable ground to believe that the books and papers of a company, or relating to key managerial personnel or any director or auditor or company secretary in practice of company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court.

- (a) enter with such assistance as may be required and search the place where such books or papers are kept; and
- (b) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.

The seized books and papers shall be returned to the company within a period which is not later than 180 days of the date of seizure. However, the books and papers may be again called for by the Registrar or Inspector for a further period of 180 days. Before returning the books and papers, the Registrar or Inspector may take copies or extracts from them or place identification marks thereon or deal with them in such manner as he considers necessary.

The provisions of the Code of Criminal Procedure, 1973 relating to search or seizure shall apply *mutatis mutandis* to every search and seizure made under this section.

Appointment of Investigators by Central Government [Section 210]

On the basis of the following, the Central Government may appoint one or more inspectors to investigate the affairs of the company and to report, thereon:

- (a) On the receipt of report of the Registrar or Inspectors under Section 208;
- (b) On intimation of a special resolution passed by a company that the affairs of the company ought to be investigated
- (c) In public interest

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.

Serious Frauds Investigation Office (SFIO)

This need to establish a separate Serious Frauds Investigation Office was first indicated by the Naresh Chandra Committee Report on Corporate Audit and Governance. The committee felt that there was a need to establish “a multi-disciplinary team that not only uncovers the fraud, but is able to direct and supervise prosecutions under various economic legislations through appropriate agencies.” A separate agency is therefore direly needed to take up investigation of serious frauds characterized by complexity in the sense of having inter-departmental and multi-disciplinary ramifications and involving large sums of money. It is on the basis of this background that the Companies Act has made provisions for the setting up of a Serious Frauds Investigation Office which had carved out a niche in successfully investigating the Satyam scam.

Serious Frauds Investigation Office (SFIO) is a multi-disciplinary organization under the Ministry of Corporate Affairs consisting of experts in the field of accounting, forensic auditing, law, information technology, law, capital markets, and taxation concerned with detection and prosecuting or recommending for prosecution white collar frauds. The SFIO takes up for investigation the following types of cases for investigation which are characterized by:

- (i) complexity coupled with inter-departmental and multi-disciplinary ramifications;
- (ii) substantial involvement of public interest to be judged by size

in terms of monetary misappropriation or in terms of the number of persons affected;

- (iii) Possibility of investigation leading to contribution to or clear improvement in systems, laws or procedures. Investigations by SFIO should be directed to yield the following results as per the Naresh Chandra Committee :
 - a quick unraveling of the fraud or scam, the persons who committed the offence or were involved in the conspiracy with a view to bring them to justice quickly;
 - maximum recovery of the gains from the fraud and the restoration of such assets or moneys to the rightful owners;
 - identification of weaknesses in law or monitoring and reporting systems because of which the fraud had occurred so as to enable the government to take corrective action.

Establishment of SFIO (Section 211)

The Serious Frauds Investigation Office shall be established by the Central Government with the object of investigating frauds relating to a company. However, the SFIO set up earlier vide Government of India resolution No.45011/16/2003-Admn1 dated 2nd July 2003 shall be deemed to be the Serious Frauds Investigation Office for the purpose of this section.

The SFIO shall be headed by a Director. It shall consist of such number of experts from the following field to be appointed by the Central Government from amongst persons of ability, experience and experience in:

- (i) banking;
- (ii) corporate affairs;
- (iii) taxation;
- (iv) forensic audit;
- (v) capital market;
- (vi) information technology;
- (vii) law; or
- (viii) persons having expertise in the fields of investigations, cyber forensic, 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 this Act.

The appointment of Director in the SFIO shall be done by the Central Government by a notification in the Official Gazette. The person to be appointed Director shall not be below the rank of a Joint Secretary having knowledge and experience in dealing with matters relating to corporate affairs.

Besides the Director, 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.

In terms of 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.

Rule 4 prescribes the terms and conditions of service of service of Director, experts, other officers and employees of the SFIO shall be such as may be prescribed.

Investigation by SFIO into the affairs of a company [section 212]

Basis of ordering investigation by the Central Government

The Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office on the basis of an opinion formed from the following:

- (a) on receipt of report of the Registrar or Inspector under section 208;
- (b) on intimation of a special resolution passed by a company requesting an investigation into its affairs;
- (c) in public interest;
- (d) on the request of any Department of Central Government or a State Government.

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

Investigating officer to exercise powers of Inspector

The Investigating Officer, to whom the Director has assigned the task of investigating the affairs of the company shall have the powers of an Inspector under section 217.

Responsibility of company and its officers to provide information to the Investigating Officer

It shall be the responsibility of the company, its officers and employees, who are or have been in the employment of the company to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of business.

Manner of investigation and submission of report

The investigation into the affairs of a company shall be conducted in the manner and by following the procedure specified in this Chapter. The SFIO shall submit its report to the Central Government within the period specified in the order.

Restrictions on other investigating agencies

Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office 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 and 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 Serious Fraud Investigation Office.

Submission of Interim Report and also the Investigation Report to the Central Government

If the Central Government so directs, the Serious Frauds Investigation Office shall submit an interim report to the Central Government. On completion of investigation, the SFIO shall submit the Investigation Report to the Central Government.

Right of any person to obtain a copy of the investigation report

Notwithstanding anything contained in this Act or in any other law, any person may obtain a copy of the investigation report by making an application in this regard to the court.

Central Government's to direct SFIO to initiate prosecution

After receipt and examination of the investigation report and taking the legal advice, the Central Government may direct the SFIO to initiate prosecution against the company, its officers, employees (past and present) or any other person directly or indirectly connected with the affairs of the company.

Investigation Report to be reckoned as report by police officer

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.

Saving of actions etc. initiated by SFIO under the Companies Act, 1956

Notwithstanding anything contained in this Act, any investigation or any other action taken or initiated by the SFIO under the provisions of the Companies Act, 1956 shall be continued as if this Act had not been passed.

State Government, police, income tax etc. to provide information to SFIO

It enjoins upon any other investigating agency, State Government, police authority or income tax authorities to provide all such information or documents available with them to the SFIO when it is investigating any offence under the Act. Similarly, the SFIO shall share any information on documents with the aforesaid agencies which may be useful such investigating agency.

Limitations on grant of Bail for offences liable is punishment for fraud under CrPC, 1973

Notwithstanding anything contained in the CrPC, 1973. the offences listed below shall be (a) cognizable, and (b) no person accused of those offence shall be released on bail or on his own bond unless:

- (i) the public prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) the court is satisfied after hearing the public prosecutor 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.

The offences which attract punishment for fraud under section 447 of the companies include those falling under sections 7(5), 7(6), 34, 36, 38(1), 46(5), 56(7), 66(10), 140(5), 206(4), 213, 229, 251(1), 339(3) and 448.

Release on bail of certain specified persons

The following persons may be released on bail of the Special Court so directs:

- (a) a person below 16 years of age,
- (b) a woman, or

- (c) a sick or infirm person

Limitation on bail to be in addition to those under the CrPC, 1973

The limitation on grant of bail under section 212(6) shall be in addition to those under the Code of Criminal Procedure or any other law for the time being in force on granting of bail.

Arrest of person guilty of any offence under section 212(8) (This subsection not notified)

A Director, Additional Director or Assistant Director of SFIO, authorized by the Central Government by general or special order, may arrest the person believed to be guilty of any offence punishable under sections referred to in section 212(6) on the basis of the material in his possession. He shall as soon as may be inform the person of the grounds for such arrest.

Forwarding a copy of arrest order to SFIO under Section 212(9) (This subsection not notified)

The copy of the order of arrest alongwith the material in possession shall be forwarded in a sealed cover and in the prescribed manner to the SFIO which shall keep it for such period as may be prescribed.

Procedure of arrest

- (i) The Authorized Officer shall send a copy of the arrest memo along with the material in possession and all the documents to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents latest by the next working day through the quickest possible means including a special messenger or by way of secured electronic means, if required.
- (ii) Authorized Officer of the Serious Fraud Investigation Office shall keep copy of the arrest memo along with the documents upto two years after disposal of the last appeal in the Court.
- (iii) An Arrest register shall be maintained at every office of the SFIO and the Arresting Officer shall ensure that necessary entries are made in the Arrest register.
- (iv) An Arrest register also be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that necessary entries are made in the Arrest register in respect of all arrests made by the Authorized Officers of the SFIO.

Presenting the arrested person before a Judicial Magistrate – Section 212(10) (This sub-section not notified)

The person arrested shall within 24 hours be produced before a Judicial Magistrate or a Metropolitan Magistrate having jurisdiction. The period of 24 hours shall exclude the time necessary for the journey from the place of arrest to the court.

Investigation into affairs of company in other cases
[Section 213] *(This section is not notified)*

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 share capital; or
- (ii) not less than one-fifth of the persons on the company's register of members in case the company has no share capital.

and supported by such evidence as may be necessary to show that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company or

(b) on an application made to it by other persons 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 engaged in the formation of company or management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the company or 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 calculation of commission payable to a managing or other director or manager of the company,

order, after giving reasonable opportunity of being heard to the parties concerned that the affairs of the company ought to be investigated by inspector appointed by the Central Government. In case such an order is passed, the Central Government shall appoint inspectors to investigate into the affairs of the company. And to report thereupon in such manner as the Central Government may direct.

Punishment

If after investigation it is proved that :

- (i) the business of the company is being conducted with intent to defraud creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or that the company was formed for any fraudulent or unlawful purpose; or
- (ii) any person connected with formation or management of company has been guilty of fraud.

Then every officer of the company who is in default or persons concerned in its formation or management shall be punishable for fraud under Section 447.

Security for payment of costs and expenses of investigation [Section 214]

Where an investigation is ordered by the Central Government under section 210(1) or pursuant to Tribunal's order under section 213, then before appointing an Inspector, the Central Government may require the applicants to give a security not exceeding Rs.25,000 towards the costs and expenses of investigation as per the following criteria

<i>S. No</i>	<i>Turnover as per previous year balance sheet (Rs.)</i>	<i>Amount of security (Rs.)</i>
1	Turnover up to Rs. 50 crore	Rs. 10,000
2	Turnover more than Rs. 50 crore and up to 200 crore	Rs. 15,000
3	Turnover more than Rs. 200 crore	Rs. 25,000

The security shall be refunded to the applicant of investigation results in prosecution.

Firm, body corporate or association not to be appointed as inspector

As per Section 215 a Firm, body corporate or association shall not to be appointed as inspector for inspection and investigation of the company.

Investigation of ownership of company [Section 216]

The Central Government may if it has reason to believe or shall upon the direction of the Tribunal that the affairs of the company ought to be investigated as regards membership of company, appoint one or more inspectors to investigate and report on matters relating to the company and its membership for 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 materially able to influence the policy of the company

Sub-section (2) (yet to be notified) provides that the Central Government shall appoint one or more inspectors if the Tribunal, in the course of any proceedings before it, directs by an order that the affairs of the company ought to be investigated.

While appointing an inspector, the Central Government may define the scope, the matters and the period of investigation and in particular limit the investigation to matters connected with particular shares or debentures. The inspector's powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding is considered relevant for the purpose of investigation.

Procedure, powers etc., of inspectors (Section 217)

Duties of officers, employees, agents, etc., of the company or body corporate under investigation

Section 217(1) obligates all existing and former officers, employees and agents of the company which is under investigations within the provisions of this Chapter or of the body corporate being investigated under Section 219 :

- (a) to preserve and produce to an inspector all books and papers of or relating to the company or the other body corporate or person which are in their custody or power; and

- (b) to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

Powers of Inspector

These shall include the following:

- (i) To require any body corporate other than that referred to in Section 217(1) to furnish information or produce books and papers before him which he may consider relevant for the purpose of investigation.

The books and papers shall not however be kept in custody for more than 180 days though these may again be called for a further period of 180 days by giving an order in writing .

The books and papers shall be returned to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced.

- (ii) To examine on oath any of the persons referred to in Section 217(1) and with prior approval of the Central Government any other person in relation to the affairs of the company or other body corporate or person, as the case may be. However, in case of an investigation under section 212, the approval of Director, Serious Frauds Investigation Office shall be sufficient.

The notes of examination shall be taken down in writing read over to, or by, and signed by the person examined and thereafter be used in evidence against him [Section 217(7)]

- (iii) Have all the powers of a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters :
 - (a) the discovery and production of books of account and other documents at such time and place as may be specified;
 - (b) summoning and enforcing attendance of persons and examining them an oath; and
 - (c) inspection of any books, registers and other documents of the company at any place .

Duty of Central/State Government officers to provide assistance to the Inspector

Where the inspector so requires with the prior approval of the Central Government it shall be obligatory for the officers of the Central/

State Government, police or statutory authority to provide necessary assistance to the inspector for the purpose of inspection, inquiry or investigation.

Reciprocal arrangements with foreign governments for inspection, inquiry and investigation

In terms of Section 217(10), the Central Government may make reciprocal arrangements, with a foreign state to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that state. For this purpose, the Central Government may by notification apply this Chapter subject to modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that state.

Under Section 217(11), if in the course of investigation into the affairs of a company, an application is made to the competent court in India by the inspector stating that the evidence is, or may be, available in a country or place outside India, such a court may issue a letter of request to the court or authority in such country or place. The Court or authority in foreign country may be requested (a) to examine orally or otherwise any person supposed to be acquainted with the facts and circumstances of the case; (b) to record his statement made in the course of such examination and (c) to require such person to produce any document or thing which may be in his possession relating to the case, and (d) to forward all the evidence taken or collected or authenticated copies thereof to the court in India which had issued the letter of request. Every statement recorded or a document received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

Similarly, under Section 217(12), upon receipt of a request from a court or authority outside India, the Central Government may forward the same 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. The inspector shall investigate into the affairs of company in same manner as investigation is done under this Act. The inspector shall send the report to the court within 30 days or such extended time as the court may allow.

The evidence collected or its authenticated copies shall be forwarded by the court to the Central Government for transmission to the court or authority in a country outside India which had issued the letter of request.

Protection of employees during investigations [Section 218] *(This section not notified)*

Obligation of the company etc. to take Tribunals approval for any action against employee(s)

If during the course of any investigation under section 210, section 212, section 213 or section 216 or during the pendency of any proceedings against any person concerned in the conduct and management of the affairs company under Chapter XVI, such company, other body corporate, or person proposes to take any of the following actions against the employees, it shall obtain the approval of the Tribunal for:

- (i) discharge or suspension of an employee; or
- (ii) punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- (iii) change in the terms of employment to the disadvantage of employee(s);

Company's right to proceed with proposed action of Tribunals approved not received within 30 days of applications

The Tribunal shall notify in writing its objection to the action proposed. In case, the company other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee.

Appeal to the Appellate Tribunal

If the company, other body corporate or person concerned is dissatisfied with Tribunal's objectives, it may prefer an appeal to the Appellate Tribunal within 30 days of receipt of the notice of objection. The decision of the Appellate Tribunal shall be final and binding Tribunal, the company other body corporate and the person concerned.

The provisions of section 218 shall be effective without prejudice to the provisions of any other laws for the time being in force.

Power of inspector to conduct investigation into the affairs of other related companies (Section 219)

Power of inspector appointed under Sections 210, 212 or 213 or investigate into the affairs of other related companies or body corporate;

- which is or has been at the relevant time been the company's subsidiary or holding or subsidiary of its holding company;

- which is or has been at the relevant time been managed by any person as a managing director or manager who is or was at the relevant time the managing director or the manager of the company;
- whose Board of Directors' comprises nominees of the company or is accustomed to act in accordance with the directions of the company or any of its directors; or
- in case any person is or has at any relevant time been the company's managing director or manager or employee.

The inspector in the above said situations shall undertake investigation with the prior approval of the Central Government so far as the results of the investigation are relevant to the investigation of the affairs of the company for which he is appointed .

Seizure of documents by the Inspector (Section 220)

Where in the course of investigation, the inspector has reasonable grounds to believe that books and papers relating to any company, body corporate, managing director or manager of such company are liability to destroyed, mutilated, altered, falsified or secreted he may :

- (a) enter the place where such books and papers are kept, and
- (b) seize books and papers after allowing the company to take copies or extracts therefrom at its costs.

The books and papers shall be kept by the inspector in his custody until the conclusion of investigation and thereafter return to the person from whose custody they were seized. Before returning, the inspector may take copies or extracts or place identification marks on them or any part thereof .

The provisions of CrPC 1973 relating to searches or seizures shall apply mutatis mutandis to every search or seizure made under section 220.

Freezing of assets of the company on inquiry and to the investigation (section 221) *(This section not notified)*

Section 221, authorizes the Tribunal to freeze the transfer, removal or disposal of funds, assets, properties of a company for a period not exceeding three years or to subject such transfer etc. to such conditions and restrictions as the Tribunal may deem fit.

The order of the Tribunal shall be based on the following:

- on a reference made to the Tribunal by the Central Government;
or
- on the basis of any inquiry or investigation into the affairs of a company under this chapter; or
- on a complaint made by such number of members as specified in Section 244(1); or
- on a complaint by a creditor having one lakh rupees outstanding against the company; or
- on the complaint of any person having 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.

Contravention of the order issued by the Tribunal shall make the company liable to a fine of not less than one lakh rupees but which may extend to twenty five lakh rupees. Every officer of the company who is in default shall be punishable with imprisonment for a term of upto 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.

Imposition of restrictions on Securities [Section 222] (*This section not notified*)

In terms of Section 222(1), where it appears to the Tribunal on the basis of any investigation under section 216, or on a complaint by any person that there is good reason to find out relevant facts about any securities issued or to be issued by the company and the Tribunal is of the opinion that such facts cannot be found except by imposing certain restrictions, it may, by order, subject the securities to such restrictions as it may deem fit for a period not exceeding three years.

Where the securities are issued or transferred or acted upon on contravention of the Tribunal order Section 222(1), the company shall be liable to a fine of not less than one lakh rupees but which may extend to twenty five lakh rupees. Every officer of the company who is in default shall be liable to imprisonment which may extend to six months or with fine of not less than twenty five thousand rupees but which may extend to five lakh rupees or with both.

Inspector's Report (Section 223)(i) *Interim and Final Report*

Depending on the nature of directions given by the Central Government, an inspector may submit interim reports and on conclusion of the investigation, he shall submit a final report.

(ii) *Report to be in writing*

Every report shall be in writing or printed or the Central Government may direct in this regards.

(iii) *Right to obtain copy of the report*

A person may obtain a copy of the report by making an application to the Central Government.

(iv) *Authentication and Admissibility in legal proceedings*

The report may be authenticated by :

- (a) the seal of the company whose affairs have been investigated;
or
- (b) a certificate of the public officer having custody of the report as provided in Section 76 of the Evidence Act, 1872.

The report shall be admissible in any legal proceeding as evidence of the matter contained in the report.

Exception:

Nothing in this section shall apply to a report referred to in Section 212.

Actions in pursuance of inspector's report (Section 224)*Presentation of the person criminally liable*

Where it appears from the Inspector's Report that any person is guilty of an offence for which he is criminally liable, the Central Government may prosecute such person. All officers and employees of the company or body corporate shall be bound to provide necessary assistance to the company in connection with the prosecution.

Filing a winding-up petition under Section 224(2) (This Sub-section not notified)

On perusal of Inspector's Report, it seems expedient to wind up the company by reason of the circumstances specified in Section 213, the

Central Government may, unless the company or body corporate is already being wound-up, authorize a person to present the following to the Tribunal.

- (a) A petition for winding up on the just and equitable ground;
- (b) An application under section 241; and
- (c) Both.

Winding-up proceedings for recovery of damages or property

The Central Government may itself bring winding-up proceedings against the company or body corporate in public interest for the following purposes:

- (a) Recovery of damages in respect of any fraud, misfeasance or misconduct in connection with promotion, formulation or management of affairs of the company or body corporate; and
- (b) Recovery of property of the company or body corporate which has been misapplied or wrongfully retained.

Indemnification of Central Government by the Company

The Company or body corporate shall indemnify the Central Government for any costs or expenses incurred in connection with any proceedings brought under Section 224(3).

Application by Central Government to Tribunal for disgorgement of property obtained by fraud (Sub-section (5) to Section 224 not notified)

Where the inspector's report states that by virtue of fraud any director, key managerial personnel, other officers or entity has taken undue advantage in the form of asset, property, cash or in any other manner, the Central Government may move the Tribunal to obtain disgorgement of such asset, property, etc., as the case may be. The Central Government may also hold the concerned persons personally liable without any limitation of liability.

Expenses of investigation (Section 225)

The expenses of investigation other than expenses of inspection under section 214 shall be defrayed in the first instance by the Central Government and then reimbursed by the following persons to the extent mentioned below:

- (a) Any person convicted on a prosecution, or the person ordered to pay damages or restore any property in proceedings brought under section 214 to the extent 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 to the extent of the amount, value of sums or property recovered as a result of such proceedings,
- (c) Unless as a result of investigation, a prosecution is instituted under section 224:
 - any company, body corporate, managing director or manager indicated in the inspector's report, and
 - the applicants for investigation, where inspector was appointed under section 213.

The above shall reimburse to the extent as directed by the Central Government.

Voluntary winding-up of company not to stop investigation [Section 226] *(This section not notified)*

An investigation under Chapter XIV may be initiated and that no investigation shall be stopped or suspended by reason of the following:

- (a) That an application has been made to Tribunal under Section 241 for relief against oppression.
- (b) That the company has passed a special resolution for voluntary winding-up; or
- (c) That 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 under Clause (c), the inspector shall inform the tribunal about the pendency of investigation proceedings before him and thereupon the Tribunal about the pendency of investigation proceedings before him and thereupon the Tribunal shall pass such order as it may deem fit.

The winding up order shall not 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.

Investigation of foreign companies (Section 228)

Provisions relating to inspection, inquiry and investigation are applicable mutatis mutandis to foreign companies also.

Penalty for furnishing false statement, mutilation, destruction of documents (Section 229)

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 unauthorized by removes or is a party to such destruction, mutilation or falsification etc. of documents relating to property, assets or affairs of the company or the body corporate.
- (b) Makes a party to making of 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.

he shall be punishable for fraud as provided in Section 447.
