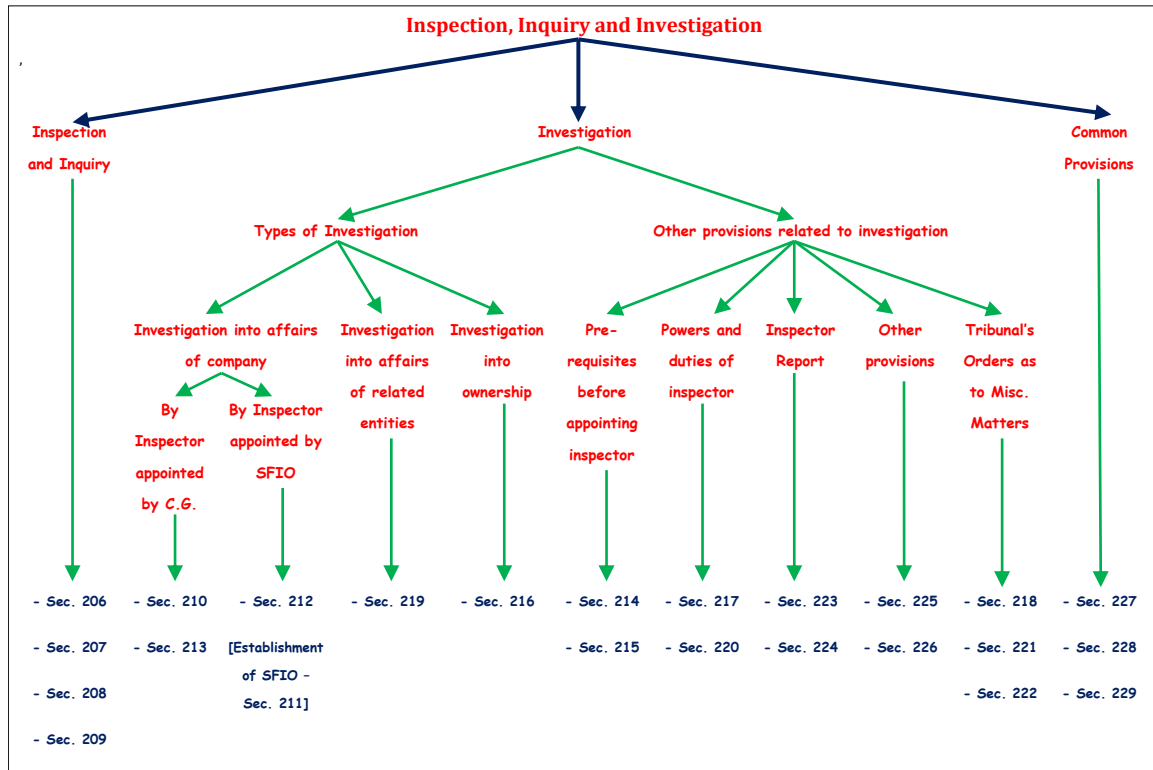


Chapter - 4 "Inspection, Inquiry and Investigation"



PART I - Inspection and Inquiry (Sec. 206 to 209)

(1) Power to call for information, inspect books and conduct inquiries (Sec. 206):

(i) Registrar's power to call for information, explanation or documents - Sec. 206(1)

(a) Circumstances in which Registrar can exercise power:

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.

(b) Power of registrar:

Registrar may by a written notice¹ 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 - Sec. 206(2)

On the receipt of a notice u/s 206(1), it shall be the duty of the company and of its officers concerned

- to furnish such information or explanation

and

- to produce the documents to the Registrar

within the time specified or extended by the Registrar.

Duty of past officers of the company - Proviso to Sec. 206(2)

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) Notice² for inspection of books etc. - Sec. 206(3)**(I) Circumstances in which Notice can be served:**

(a) If no information or explanation is furnished to the Registrar within the time specified u/s 206(1); or

(b) If the Registrar on examination of documents furnished is of 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.

Before serving notice u/s 206(3), Registrar shall record his reasons in writing for issuing such notice.

(ii) Power of Registrar:

The Registrar may by another written notice³ call on the company to produce for his **inspection** such further books of account, books, papers and explanations as he may require at specified place and at specified time.

(iv) Inquiry by the Registrar - Sec. 206(4)

If the Registrar is satisfied

- on the basis of information available with or furnished to him

or

- on a representation made to him by any person

↓ that

- 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

- if the grievances of investors are not being addressed,

the Registrar may by a written order, 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.

Note: Before passing such an order, the Registrar has to inform the company of the allegations made against it.

The C.G. 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 u/s 206(4).

(v) Inspection by C.G. - Sec. 206(5) & 206(6)

(a) Without prejudice to the foregoing provisions of Sec. 206, C.G. (Regional Director) 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.

(b) The C.G. may, having regard to the circumstances, authorise any statutory authority to carry out the inspection of books of account of a company.

	<p>(vi) <u>Penalty for Contravention - Sec. 206(7)</u></p> <p>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</p> <ul style="list-style-type: none"> - with a fine upto ₹ 1 lakh <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> - in the case of a continuing failure, with an additional fine which may extend to ₹ 500 for every day after the first during which the failure continues.
	<p>(2) <u>Conduct of Inspection and Inquiry (Sec. 207)</u></p>
	<p>(a) <u>Duty of director, officer or employee - Sec. 207(1)</u></p>
	<p>Where a Registrar or Inspector calls for the books of account and other books and papers u/s 206, it shall be the duty of every director, officer or other employee of the company:</p>
	<p>(i) to produce all such documents to the Registrar or Inspector;</p>
	<p>(ii) to furnish him with such statements, information or explanations in such form as the Registrar or Inspector may require; and</p>
	<p>(iii) to render all assistance to the Registrar or Inspector in connection with such inspection.</p>
	<p>(b) <u>Powers of the Registrar or Inspector to make copies - Sec. 207(2)</u></p>
	<p>The Registrar or Inspector making an inspection or inquiry u/s 206 may, during the course of such inspection or inquiry, as the case may be,</p>
	<p>(i) make or cause to be made copies of books of account and other books and papers; or</p>
	<p>(ii) place or cause to be placed any marks of identification in such books in token of the inspection having been made.</p>
	<p>(c) <u>Powers of Registrar or Inspector as vested in Civil Court - Sec. 207(3)</u></p>
	<p>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.</p>

	(d) <u>Penalty for Contravention - Sec. 207(4)</u>
	If any director or officer of the company disobeys the direction issued by the Registrar or the Inspector under this section, he shall be punishable
	- with imprisonment which may extend to 1 year
	and
	- with fine which ranges from ₹ 25,000 to ₹ 1 lakh.
	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 <u>disqualified from holding an office in any company</u> .
	(3) <u>Report on inspection made (Sec. 208)</u>
	- The Registrar or inspector shall, after the inspection of the books of account or an inquiry u/s 206 and other books and papers of the company u/s section 207,
	- submit a report in writing to the C.G. (Regional Director) along with such documents, if any
	AND
	such report may, if necessary, include a recommendation that <u>further investigation</u> into the affairs of the company is necessary giving his reasons in support.
	(4) <u>Search and Seizure - Sec. 209</u>
	(i) <u>Circumstances for seizure - Sec. 209(1)</u>
	Where, upon information in his possession or otherwise, the Registrar or Inspector has reasonable ground to believe that the books and papers
	- of a company, or
	- relating to the KMP or any director or auditor or company secretary in practice if the company has not appointed a company secretary,
	are likely to be destroyed, mutilated, altered, falsified or secreted.
	(ii) <u>Prerequisite for seizure:</u>
	Any action for seizure of books and papers may be taken by Registrar or Inspector after obtaining an order from the Special Court.

	(iii) <u>Powers for Seizure:</u>
	The Registrar or Inspector for seizure of books and papers may
	(i) enter, with required assistance, and search, the place or places where such books or papers are kept;
	AND
	(ii) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers.
	(iv) <u>Period of seizure - Sec. 209(2)</u>
	- The Registrar or inspector shall return the books and papers seized, as soon as may be, and in any case not later than 180 th day after such seizure, to the company from whose custody or power such books or papers were seized.
	- 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.
	- The Registrar or inspector may, before returning such books and papers take copies of, or extracts from them or place identification marks on them or any part thereof.
	DO Practice - Questions on Sec. 206 to 209
	PART II - Investigations by Inspectors appointed by C.G. (Sec. 210, 213, 216 and 219)
	(5) <u>Investigation into affairs of company (Sec. 210)</u>
	(i) <u>Circumstances when Investigation may be ordered by C.G. - Sec. 210(1)</u>
	C.G. <u>may</u> order an investigation into the affairs of the company in following cases:
	(a) on receipt of a report of the Registrar or Inspector u/s 208;
	(b) on intimation of SR passed by a company that affairs of the company ought to be investigated; or
	(c) in public interest,

(ii) Investigation on Court or Tribunal order - Sec. 210(2)

Where an order is passed by a Court or Tribunal in any proceedings, that affairs of of a company ought to be investigated, the C.G. shall order an investigation.

(iii) Appointment of inspectors - Sec. 210(3)

C.G. 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 C.G. may direct.

(iv) Conditions as to Security: Rule 5 of the Companies (Inspection, Investigation and Inquiry) Rules, 2014

- C.G. may before appointing an inspector u/s 210(3), require the applicant to give a security not exceeding ₹ 25,000 for payment of the costs & and expenses of investigation as per the criteria given below:

Sl. No.	Turnover of PY (₹)	Amount of security (₹)
1	≤ 50 crore	₹ 10000
2	> ₹ 50 crore & ≤ ₹ 200 crore	₹ 15000
3	> ₹ 200 crore	₹ 25000

- Security shall be refunded to applicant if the investigation results in prosecution.

(6) Investigation into company's affairs in other cases (Sec. 213)**(i) Circumstances in which Tribunal may pass order:**

(a) On an application made by:

(i) ≥ 100 members or members holding ≥ 1/10th of the total voting power, in the case of a company having a share capital;

or

(ii) ≥ 1/5th of the persons on the company's register of members, in the case of a company having no share capital,

and supported by necessary evidence showing that applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company.

	(b) On an application made to it by <u>any other person or otherwise</u> , if it is satisfied that there are circumstances suggesting that:
	(i) business of company is conducted with intent to defraud the creditors members or other person for fraudulent/unlawful purpose;
	(ii) persons concerned in formation of company or management have been guilty of fraud, misfeasance or other misconduct; or
	(iii) the members of the company have not been given all the information with respect to its affairs.
	(ii) <u>Order by Tribunal:</u>
	- In the circumstances mentioned above, Tribunal may order that the affairs of the company ought to be investigated by an inspector appointed by C.G.
	- Order <u>shall</u> be passed after giving a reasonable opportunity of being heard.
	(iii) <u>Appointment of Inspector:</u>
	C.G. <u>shall</u> appoint one or more competent persons as inspectors to investigate into affairs of the company in respect of such matters and to report thereupon.
	(iv) <u>Punishment for fraud:</u>
	If after investigation it is proved that
	(i) the business of company is being conducted with intent to defraud creditors, members or other persons 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 persons concerned in formation/management of affairs of company shall be punishable for fraud u/s 447.
	(7) <u>Investigation of ownership of company (Sec. 216):</u>
	(i) <u>Purposes for which investigation may be ordered - Sec. 216(1)</u>
	C.G. <u>may</u> appoint inspector(s) to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons-

	(i) who are or have been financially interested in the success or failure of the company; or
	(ii) who are or have been able to control or to materially influence the policy of the company; or
	(iii) 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.
	(ii) <u>Appointment of inspectors on directions of Tribunal - Sec. 216(2)</u>
	C.G. shall appoint inspector(s), if the Tribunal, in the course of any proceeding, 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 Sec. 216(1).
	(iii) <u>Scope of Investigation - Sec. 216(3)</u>
	While appointing an inspector, the C.G. 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.
	(8) <u>Power of inspector to conduct investigation into affairs of related companies (Sec. 219)</u>
	If an inspector appointed u/s 210 or 212 or 213 to investigate into affairs of a company considers it necessary for purposes of investigation, shall also investigate the affairs of:
	(i) any other body corporate which is, or has at any relevant time been the company's subsidiary or holding, or a subsidiary of its holding company;
	(ii) any other body corporate which is, or has at any relevant time been managed by any person as MD or as manager, who is, or was, at the relevant time, the MD or the manager of the company;
	(iii) any other body corporate whose BOD 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

- (iv) any person who is or has at any relevant time been the company's MD or Manager or Employee.

Note: Such investigation is allowed only with prior approval of the Central Government.

DO Practice - Questions on Sec. 210, 213, 216 and 219

PART III - Pre-requisites before appointing an Inspector (Sec. 214 and 215)

(9) Security for payment of costs and expenses of investigation (Sec. 214)

(i) Investigation in which security may be demanded:

Where an investigation is ordered by the Central Government

(i) in pursuance of clause (b) of sub-section (1) of section 210,

or

(ii) in pursuance of an order made by the Tribunal u/s 213.

(ii) Requirement of security:

(i) C.G. may before appointing an inspector, require the applicant to give such security not exceeding ₹ 25,000 as may be prescribed, for payment of the costs and expenses of the investigation.

(ii) Such security shall be refunded to the applicant if the investigation results in prosecution.

(10) Firm, body corporate or association not to be appointed as inspector (Sec. 215)

No firm, body corporate or other association shall be appointed as an inspector.

DO Practice - Questions on Sec. 214