

PART VII - Investigation by SFIO (Sec. 211 and 212)	
(20)	<u>Establishment of Serious Fraud Investigation Office (SFIO) (Sec. 211)</u>
(I)	<u>Setting up of SFIO - Sec. 211(1)</u>
	The C.G. shall, by notification, establish an office to be called the SFIO to investigate frauds relating to a company.
(II)	<u>Composition of SFIO:</u>
	<u>Sec. 211 (2):</u> SFIO shall be headed by a Director, and consist of such number of experts from the following fields to be appointed by the C.G. from amongst persons of ability, integrity and experience in,
	(1) banking;
	(2) corporate affairs;
	(3) taxation;
	(4) forensic audit;
	(5) capital market;
	(6) information technology;
	(7) law; or
	(8) such other fields as may be prescribed (Rule 3).
	<u>Sec. 211(3):</u> The C.G. 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.
	<u>Sec. 211(4):</u> The C.G. 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.

<b>(21)</b>	<b><u>Investigation into affairs of Company by Serious Fraud Investigation Office (Sec. 212)</u></b>
	<b>(i) <u>Assigning investigation to SFIO - Sec. 212(1)</u></b>
	C.G. may, by order, assign the investigation into the affairs of a company to SFIO:
	(a) on receipt of a report of the Registrar or inspector u/s 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 C.G. or a State Government.
	<b>Note: 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.</b>
	<b>(ii) <u>Effect of Assigning Investigation to SFIO over other investigation agencies - Sec. 212(2)</u></b>
	(i) Where any case has been assigned by C.G. to the SFIO for investigation, no other investigating agency of C.G. or any S.G. shall proceed with investigation in such case in respect of any offence under this Act.
	(ii) 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.
	<b>(iii) <u>Manner of Investigation by SFIO - Sec. 212(3) &amp; 212(4)</u></b>
	(i) SFIO shall conduct the investigation in the manner and follow the procedure provided in this Chapter (Chapter XIV).
	(ii) SFIO shall submit its report to C.G. within the period specified in the order.
	(iii) Investigating Officer who shall have the power of the inspector u/s 217.
	<b>(iv) <u>Duties of company, its Officers or employees - Sec. 212(5)</u></b>
	The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide
	(i) all information,
	(ii) explanation,
	(iii) documents and
	(iv) assistance to the Investigating Officer as he may require.

**(v) Cognizable nature of offence - Sec. 212(6)**

Offences covered u/s 447 of this Act shall be cognizable and no person accused of any such 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) 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.

**Note:** A person, who, is under the age of 16 years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

The Special Court shall not take cognizance of any offence referred in this sub section except upon a complaint in writing made by—

(i) the Director, SFIO; or

(ii) any officer of the C.G. authorised, by a general or special order in writing in this behalf by that Government.

**(vi) Provisions as to powers of SFIO Officers to arrest the accused:**

**Sec. 212(8):** If any officer not below the rank of Assistant Director authorised in this behalf by the C.G., 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 Sec. 212(6), he may arrest such person.

**Sec. 212(9):** The Officer authorised u/s 212(8) shall, immediately after arrest of such person, forward a copy of the order, along with the material in his possession, to the SFIO in a sealed envelope, in prescribed manner.

SFIO shall keep such order and material for such period as may be prescribed.

**Sec. 212(10)**: Every person so arrested shall within 24 hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.

The period of 24 hours shall exclude the time necessary for journey from the place of arrest to the Special Court or Magistrate's court.

Procedures as to arrest of persons are covered under Companies (Arrests in connection with Investigation by SFIO) Rules, 2017.

**(vii) Provisions as to Reports of SFIO:**

**(a) Interim Report - Sec. 212(11)**

The SFIO shall submit an interim report to the C.G., if so directs.

**(b) Investigation report - Sec. 212(12)**

The SFIO shall submit the investigation report to the C.G. on completion of the investigation.

**(c) Obtaining a copy of report - Sec. 212(13)**

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.

**(viii) Initiation of Prosecution - Sec. 212(14):**

On receipt of the investigation report, the C.G. may, after examination of the report, 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 with the affairs of the company.

**(ix) Filing application by C.G. for disgorgement of assets etc. - Sec. 212 (14A)**

Where the report u/s 212(11) or 212(12) states that fraud has taken place and due to such fraud, any director, KMP, other officer of the company or any other person or entity, has taken undue advantage, whether in the form of any asset, property or in any other manner, the C.G. may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset or property and also for holding such director, KMP, other officer or any other person liable personally.

PART VIII - Common Provisions (Sec. 227, 228 and 229)	
(22)	<p><b>(A) <u>Legal advisers and bankers not to disclose certain information (Sec. 227):</u></b></p> <p>Nothing in this Chapter shall require the disclosure to the Tribunal or to the C.G. or to the Registrar or to an inspector appointed by the C.G.:</p> <p>(i) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client;</p> <p style="text-align: center;">or</p> <p>(ii) 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.</p>
	<p><b>(B) <u>Investigation etc. of foreign companies (Sec. 228):</u></b></p> <p>The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.</p>
	<p><b>(c) <u>Penalty for furnishing false statement, mutilation, destruction of documents (Sec. 229):</u></b></p> <p>(i) <b><u>Persons to be charged:</u></b></p> <ul style="list-style-type: none"> <li>- Person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation.</li> <li>- An officer or other employee of a company or other body corporate which is also under investigation.</li> </ul> <p>(ii) <b><u>Situations under which persons will be charged:</u></b></p> <p>Where the persons mentioned above,</p> <p>(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 unauthorized removal of, documents relating to the property, assets or affairs of the company or the body corporate;</p> <p>(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or</p> <p>(c) provides an explanation which is false or which he knows to be false.</p>

(iii) Punishment:

Such persons shall be punishable for fraud in the manner as provided in Sec. 447.

Do Practice - Questions on Sec. 227, 228 and 229

