Anti-Fraud Enforcement Mechanism, Inspection, Inquiry, Investigation & Serious Fraud Investigation Office

P H Arvindh Pandian
Senior Advocate
Power to call for information, inspect books and conduct inquiries - Section 206

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 209A and 234 of the Companies Act, 1956.

- **Basis of initiating action under section 206 (1):**
  - Document filed by Company or
  - On any information received by him – Does this refer to any third party person or means information given by the company?

- The reach of section 206 has been expanded under the proviso of sub-section (2) to include officers who were in employment relating to past period to which such information or explanation relates. The word “officer” has been defined under section 2(59) to “include any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act”.

- Sub section (3) now stipulates that the registrar **shall issue a written notice and not an order by recording reasons in event of inadequate or insufficient information provided by the officials of the company.**
Power to call for information, inspect books and conduct inquiries -Section 206

- Sub section (4) is a new addition in comparison to the 1956 Act. Now the Registrar can order an inquiry:
  - Based on the information available to him or
  - on a representation made 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
    - if the grievances of investors are not being addressed

- The **Central Government** being satisfied that the above circumstances exist, it may direct the registrar or inspector to conduct an inquiry.

- If it is found on an inquiry that the business has been run in a manner which is fraudulent and unlawful, the officers shall be punishable for fraud as provided under section 447. **Does this mean that other offences like the non-compliance of the act or investor grievance as provided under sub-section (4) would not fall under the ambit of Section 447?**
Power to call for information, inspect books and conduct inquiries - Section 206

- Sub-section (5) is a new addition in comparison to the 1956 Act. The Central Government may **without prejudice** to provisions of this section, 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. **Does this mean that the Central Government can initiate inspection when inquiry has been already initiated by the Registrar under sub-section (1) to (4) as the words “without prejudice” has been used under this sub-section?**

- Sub-section (6) is a new addition in comparison to the 1956 Act. The Central Government has the power to by general or special order, authorize any statutory authority to carry out the inspection of books of account of a company or class of companies.

- The failure of the company 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 one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.**
Power to call for information, inspect books and conduct inquiries - Section 206

- The Power of the Securities & Exchange Board of India for inspection and inquiry as was provided under section 209 (A) (1) (6) of the companies act, 1956 is no more prevalent under this Chapter of the Companies Act, 2013.

- Though, the power under section 55 A of the Companies Act, 1956 continues under section 24 of the Companies Act, 2013, it still does not give power to the SEBI to inspect under chapter XIV of the Companies Act, 2013.
The Section was notified on 26<sup>th</sup> March 2014 and was effective from 1<sup>st</sup> April 2014.

This section corresponds to section 209 A of the Companies Act, 1956. Sub-section (1), (2) & (3) of 207 are similar to the companies act 1956.

Section 207 (1) deals with the duty of the officer of the company to furnish information, explanation and statements when called upon by the Registrar or Inspector.

Section 207 (2) deals with the power of the Registrar or Inspector to make copies and mark identifications.

Section 207 (3) states that the Registrar or Inspector making an inspection or inquiry shall have powers as vested with the Civil Court under the C.P.C.
Sub-section 4 (i) & (ii) is a new addition. The sub-section states that:

(i) 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 twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) 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 unlike the period of 5 years as provided under the companies act, 1956.**
The Section was notified on 26th March 2014 and was effective from 1st April 2014.

This section corresponds to section 209 A of the Companies Act, 1956.

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.

The recommendation of further investigation is an additional feature under the new Companies Act, 2013.
The Section was notified on 26th March 2014 and was effective from 1st April 2014.

This section corresponds to section 234 A of the Companies Act, 1956.

This section requires the order of the Special Court to conduct search and seizure. However, though section 209 has been notified, the provisions relating to the establishment of the Special Court has not yet been notified. Hence, the implementation of this notified is in a limbo as the Special Court has not yet been established. The power to order under the earlier act rested with the Magistrate Court, but now under the present act has been shifted to the Special Court.

The old act under section 234 A conferred power on only the Registrar to search and seize. Now under section 209 (1) the Inspector appointed by the Central Government also has the power to search and seize. This power flows from the provisions of section 206 (5) of the companies act, 2013.
Section 209 (1) has dropped the word “body corporate” and has now extended the provisions to cover books and papers relating to the key managerial personnel or director or auditor or a company secretary in practice if the company has not appointed a company secretary.

The period for the return of the books and papers seized has been extended to a period of 180 days with another extension of 180 days possible by way of a written order. The period in the old act was only 30 days with no possibility of extension.
The Section was notified on 26th March 2014 and was effective from 1st April 2014.

This section corresponds to a mix of section 235 and 237 of the Companies Act, 1956.

In the opinion of the Central Government, if it is necessary to investigate into the affairs of the 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.

The new act has included point (c) referring to “public interest”.

Section 237 of the Companies Act, 1956 had references to the words “shall” whereas under section 210 (1) the Companies Act, 2013 it is dependent on the opinion of the CG.
The words “shall” has been inserted under section 210 (2) wherein on an order passed by a court or the tribunal in any proceeding before it, the Central Government shall order an investigation into the affairs of that company.

Under S.S 3, 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.
Investigation into company’s affairs in other cases – Section 213

- The Section has not yet been notified. This section corresponds to a mix of section 235 and 237 of the Companies Act, 1956.

- Who can make an application under section 213 (a) to the Tribunal:
  
  - (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 *(as against 200 members under the 1956 act)*
  
  - (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.

- Criteria to satisfy the Tribunal under section 213 (a) – “**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**”.
Investigation into company’s affairs in other cases – Section 213

- Any person can make an application under section 213 (b) to the Tribunal.
- Circumstances to satisfy the Tribunal under section 213 (b) –
  - (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.
The conditions for a member to make an application under section 213 (a) refers to production of evidence. Whereas, under section 213 (b) any person can apply by providing circumstances to the satisfaction of the Tribunal.

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.
Establishment of Serious Fraud Investigation Office ("SFIO") – Section 211

- Section was notified on 26th March 2014 and was effective from 1st April 2014.

- The Central Government shall establish the SFIO by way of notification under sub-section (1) of 211. Until the SFIO is established under sub-section (1), the SFIO already established by CG during July 2003 shall be deemed to be the SFIO for the purposes of this section.

- SFIO is established to investigate "Frauds" relating to company.
Establishment of Serious Fraud Investigation Office (SFIO) – Section 211

**Constitution of SFIO –**

- The Serious Fraud Investigation Office shall be headed by a Director and 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,—
  - (i) banking;
  - (ii) corporate affairs;
  - (iii) taxation;
  - (iv) forensic audit;
  - (v) capital market;
  - (vi) information technology;
  - (vii) law; or
  - (viii) such other fields as may be prescribed.
The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.

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 3 of Companies (Inspection, Investigation and Inquiry) Rules, 2014.
Investigation into affairs of company by SFIO – Section 212

- The Section has been notified except sub-section (8) to (10) and certain portions of sub-section (6) of this section. This is a new section introduced under the CA, 2013.
- When the Central Government is of the opinion that the affairs of a company are to be investigated by the SFIO on:
  - (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 (Additional ground when compared to Section 210)

the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

- The power of the Central Government under this section is without prejudice to the provisions of section 210. **Would this mean that investigation under section 210 and investigation by the SFIO can be done simultaneously?**
Investigation into affairs of company by SFIO – Section 212

- No other investigation agency of the Central or State Government to proceed with the investigation when the case has been assigned to the SFIO. In case any other investigation agency has initiated the investigation, it shall not be proceeded with and all relevant documents shall be transferred to the SFIO – Section 212 (2).

- Section 212 (1) refers to words “Inspector” whereas section 212 (4) and the rest of the section refers to the word “Investigating Officer”.

- Notwithstanding anything contained under the Code of Criminal Procedure, 1973 the sections of the Companies Act, 2013 which attract the punishment of fraud under section 447 shall be cognizable.
Investigation into affairs of company by SFIO – Section 212

Provisions attracting fraud:
“sub-sections (5) and (6) of section 7, section 34, section 36, subsection (1) of section 38, sub-sections (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66 (not notified), sub-section (5) of section 140 (not notified), sub-section (4) of section 206, section 213 (not notified), section 229, sub-section (1) of section 251 (not notified), sub-section (3) of section 339 (not notified) and section 448”

Provision of Bail:
- No person accused of any offence under those sections which attract 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
Investigation into affairs of company by SFIO – Section 212

- The Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by-
  - (i) the Director, Serious Fraud Investigation Office; or
  - (ii) any officer of the Central Government authorized, by a general or special order in writing in this behalf by that Government

- Sub-section (6) (ii) & (13) refers to the word “Court” whereas the remaining portions of the section refers to the word “Special Court”. Reference to the words “Judicial Magistrate” or “Metropolitan Magistrate” have also been made.

- Sub-section (11) states that if the Central Government direct, the SFIO shall furnish and interim report. Sub-section (12) states that on completion of investigation, the SFIO shall submit the investigation report to the Central Government.

- Sub-Section (14) states that the Central Government on receipt of the Investigation Report, shall direct the SFIO to prosecute.
Investigation into affairs of company by SFIO – Section 212

- The offence investigated under this Act by the SFIO and any other State or Central Government agency being the same offence, then such investigating agency, State Government, police authority or income tax authorities shall provide such information or document to the SFIO – Section 212 (17) (a).

- In event of any such investigating agency, State Government, police authority or income tax authorities investigating any offence or matter under any other law, the SFIO shall share any information or documents with it if may be relevant or useful – Section 212 (17) (b).
Security For Payment Of Costs & Expenses Of Investigation – Sec 214

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 236 of the Companies Act, 1956.

- On an investigation being ordered by the Central Government in pursuance of:
  - clause (b) of sub-section (1) of section 210, or
  - an order made by the Tribunal under section 213,

the Central Government may before appointing an inspector, require the applicant to give such security not exceeding twenty-five thousand rupees (old act prescribed Rs.1000/-) as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution.
Firm, Body Corporate or Association Not To Be Appointed As Inspector – Sec 215

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 238 of the Companies Act, 1956. There are no changes in the new provision.

- No firm, body corporate or other association shall be appointed as inspector
Investigation Of Ownership Of Company - Sec 216

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 247 of the Companies Act, 1956.

- Under sub-section (1) if the Central Government has reason to do so, it may appoint inspectors to investigate and report on matters relating to the membership of the company 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 to materially influence the policy of the company
S.S (2) states that without prejudice to sub-section (1), the Central Government shall appoint inspectors, if the **Tribunal (old act referred to the Company Law Board)**, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated for determining the persons under sub-section 1.

Section 247 (5) of the 1956 Act dealing with the provision as to the persons to whom the section shall apply has been omitted in the new provision.

**Expenses:**

Section 247 (6) of the 1956 act provided for the expenses to be defrayed by the Central Government. The present section under the companies act, 2013 is silent on the aspect of expenses.
The Section has not yet been notified and corresponds to section 240 of the Companies Act, 1956.

Under section 240 (6) of the companies act, 1956 defined the terms ‘officers’ and ‘agents’ but are not included in the section 227 of the new act. The definition of “officer” has been provided under section 2 (59) of the CA 2013.

**Extension of Holding Period:**
- The period of 180 days for holding the books and records by the inspector has been introduced under S.S 3 of section 217. This period can be further extended for 180 days by an order in writing.

**Power of Civil Court vested with the Inspector:**
- S.S 5 of section 217 provides that the Inspector shall have all the powers vested with a civil court under the Code of Civil Procedure, 1908.
Punishment for disobeying:

S.S 6 states that any officer or director who disobeys the direction of the Registrar of Inspector will be punishable with imprisonment of one year and with fine which shall not be less than 25,000 but which may extend to 1,00,000.

Assistance of Central and State Government:

S.S 9 states that the officers of the Central and State Government shall provide assistance to the Inspector for the purposes of Investigation, Inquiry and Inspection, which the Inspector may with the prior approval of the Central Government require.

Reciprocal Arrangements:

S.S. 10 provides that the Central Government may enter into an agreement with the Government of a foreign state for reciprocal arrangements to assist any inspection, inquiry or investigation under this Act or under the corresponding law in force in that state.
The Section has not yet been notified and corresponds to section 635B of the Companies Act, 1956. There are no changes in the new provision.

Notwithstanding anything contained in any other law for the time being in force during the course of any investigation of the affairs and any other matter relating to the company under this chapter or during the pendency of any proceeding against any person under chapter XVI, such company, other body corporate or person proposes—

- to discharge or suspend any employee; or
- to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
- to change the terms of employment to his disadvantage, then such company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee.
The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 239 of the Companies Act, 1956.

Subject to the prior approval of the Central Government, an inspector appointed under section 210 or section 212 or section 213 can also investigate into the affairs of—

- 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;

- 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;

- 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

- any person who is or has at any relevant time been the company's managing director or manager or employee
Seizure of documents by Inspector – Sec 220

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 240 A of the Companies Act, 1956.

- 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 can enter the place where the books or copies are kept. The inspector can now under the new section take copies of, or extracts of the books and papers.

- Under section 240A of 1956 Act permission from Magistrate of the First Class or, as the case may be the Presidency Magistrate having jurisdiction was a prerequisite, whereas under the new section no permission of such nature is required.
Freezing of assets of company on inquiry and investigation- Sec 221

- The section is not notified and is a new section introduced under the Companies Act, 2013.

- S.S (1) states that where it appears to the Tribunal that 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 (O&M Provision) 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.
Imposition of restrictions upon securities – Sec 222

- The section is not notified and corresponds to section 250 of 1956 Act.

- S.S.(1) states that 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.

- The grounds for interference need serious consideration and listing down as they are vague. Can this section give power to the Tribunal to stay any issue of securities for e.g an Initial Public Offering or a Further Public Offer of a listed company though the documents are accepted and cleared by SEBI through the book building process?.

- In the old act reference to the words “shares” and “debentures” were used but now it includes any other “securities”.
The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 241 & 246 of the Companies Act, 1956. There are no changes in the new provision.

An inspector appointed under this Chapter 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 in writing or printed.

The detailed provision on the availability of the report copy under S.S 2 of Section 241 of the companies act, 1956 has been diluted under the present act by stating that it shall be made available on application.

The report of any inspector appointed under this Chapter shall be authenticated either-

- (a) by the seal 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 (1 of 1872), and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

Nothing in this section shall apply to the report referred to in section 212 (“SFIO”).
The Section was notified on 26\textsuperscript{th} March 2014 and was effective from 1\textsuperscript{st} April 2014 and corresponds to section 242,243, 244 of the Companies Act, 1956. There is no change in the provision.

S.S 1 - On receiving the Inspectors Report under section 223, if it appears to the Central Government that 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.
S.S 2 - If any company or other body corporate is liable to be wound up under this Act 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 authorized 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.
Action to be taken in the pursuance of inspector’s report – Sec 224

S.S (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.

S.S (4) 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).
S.S.(5) 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.
Expenses of investigation- Sec 225

The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 245 of the Companies Act, 1956. Sec 245 (1) & (2) have been retained whereas S.S (3) (4) (5) (6) of the 1956 Act are omitted under the 2013 Act.

(1) The expenses of an investigation by an inspector appointed by the Central Government under this Chapter other than expenses of inspection under section 214 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,--

(i) any company, body corporate, managing director or manager dealt with by the report of the inspector; and

(ii) the applicants for the investigation, where the inspector was appointed under section 213, to such extent as the Central Government may direct.

(2) Any amount for which a company or body corporate is liable under clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.
Voluntary winding up of company, etc. not to stop investigation proceedings – Sec 226

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 250 A of the Companies Act, 1956.

- 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:

- Proviso states that the inspector shall inform the Tribunal when an investigation proceedings is pending in case of a winding up proceeding pending before the Tribunal

- Winding up order of the Tribunal does 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.
Legal advisers and bankers not to disclose certain information Sec- 227

- The Section was notified on 26th March 2014 and was effective from 1st April 2014 and corresponds to section 251 of the Companies Act, 1956. There is no change in the new section.

- 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.
The Section was notified on 26th March 2014 and was effective from 1st April 2014. This is a new section introduced under the Companies Act, 2013.

The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.
Penalty for furnishing false statement, mutilation, destruction of documents – Sec 229

- Section was notified on 26th March 2014 and was effective from 1st April 2014 and is a new section introduced under the Companies Act, 1956.

- 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 he shall be punishable for fraud in the manner as provided in section 447.
Punishment for Fraud – Sec 447 – Chapter XXIX

- The Section was notified on 26th March 2014 and was effective from 1st April 2014. This is a new section introduced under the Companies Act, 2013.

- Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

- Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
Explanation.—For the purposes of this section—

(i) “fraud” in relation to affairs of a company or any body corporate, includes 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;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.
Sec 448-454 - Chapter XXIX

- Sec 448- punishment for false statement
- Sec 449- punishment for false evidence
- Sec 450- punishment where no specific penalty or punishment is provided
- Sec 451- punishment in case of repeated default
- Sec 452- punishment for wrongful withholding of property
- Sec 453- punishment for improper use of limited or private limited.
- Sec 454- adjudication of penalties
THANK YOU