



## **SFIO HAS POWER TO ARREST - SECTIONS 212(8)-(10) & RULES NOTIFIED**

### **INTRODUCTION**

The Ministry of Corporate Affairs has on 24 August, 2017 notified the following relating to Serious Fraud Investigation Office (“**SFIO**”):

1. Sections 212(8), 212(9) and 212(10) of the Companies Act, 2013 (“**Act**”) pursuant to its notification dated 24 August, 2017 bearing no. S.O.2751(E) (“**Notification**”); and
2. Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 (“**SFIO Rules**”).

### **Effective Date of Notification & SFIO Rules**

The Notification and SFIO Rules are effective from 24 August 2017

### **Notified Sections 212(8)-(10) of the Act**

#### **Section 212(8)**

Section 212(8) read with section 212(6) of the Act and the SFIO Rules, provides that if any of the following officers of SFIO:

1. Director, or
2. Additional Director or Assistant Director with the prior written approval of the Director of SFIO

has, on the basis of material in his possession, reason to believe (such reason to be recorded in writing) that any person has been guilty of the offence of “fraud”punishable under section 447 of the Act, he may arrest such person and must, as soon as may be, inform him of the grounds for such arrest:

“**Fraud**” has been defined under Section 447 as follows:

*“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;*

*“Wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;*

*“Wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”*

Further, as per Rule 3 of the SFIO Rules, prior written approval of the Central Government is required where an arrest of a person is to be made in connection with a government company or a foreign company under investigation. In case of government company, the managing director or the person in-charge of the affairs of such company must be intimated and if the person arrested is the managing director or person in-charge, then the Secretary of the administrative ministry concerned must be intimated, by the arresting officer.

#### **Section 212(9)**

Section 212(9) read with Rule 5 of the SFIO Rules, require the officers of SFIO to immediately after arrest of such person forward a copy of the arrest order, along with the material in his possession to SFIO and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within 24 hours through the quickest possible means.

The Director, SFIO is required to preserve a copy of such arrest order along with the supporting materials for a period of 5 years.

The office of Director, SFIO is required to maintain an arrest register containing entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest made by the arresting officers.

#### **Section 212(10)**

Every person arrested under section 212(8) must be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction within 24 hours of such arrest (excluding the journey time from the place of arrest to the Magistrate's court).

#### **History of SFIO**

As per the Act, SFIO has been established through the Government of India vide notification no. S.O. 2005 (E) dated 21 July 2015. It is a multi-disciplinary organisation under the Ministry of Corporate Affairs, consisting of experts in the field of accounting, forensic auditing, banking, law, information technology, investigation, company law, capital market and taxation etc. for detecting and prosecuting or recommending for prosecution white crimes/ frauds.

#### **Implication of notification of Sections 212(8)-(10) & SFIO Rules**

With the notification of the aforesaid sections and the Rules, SFIO has been given wide powers to arrest a person on the basis of material in his possession if he has reason to believe that such person has been guilty of fraud covered under section 447 of the Act.

It may be noted that the above provisions are applicable to all companies including private and public companies.

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