

Constitution of High Level Committee
for preparation of Investigation Manual
for Serious Fraud Investigation Office (SFIO)

A. SFIO: Serious Fraud Investigation Office

SFIO is an Indian agency which investigates serious fraud. SFIO was established in year 2015 by Central Government in exercise of its powers u/s 211 of the Companies Act, 2013. SFIO Office is headed by a Director and consist of experts from different fields of accountancy, forensic audit, law, investigation, company law, capital markets and taxation for detecting and prosecuting or recommending for prosecution while collar crimes and frauds. Generally, it takes up only cases involving INR 500 crore or more. SFIO has Computer Forensic and Data Mining Laboratory (CFDML) since 2013 to provide support and service to the officers of SFIO in their investigations. SFIO is also looking into the books of companies that are currently undergoing Corporate Insolvency Resolution Process (CIRP).

B. Set up of High Level Committee

Recently on 06th March, 2020 Ministry of Corporate Affairs (MCA) had constituted 12 member Committee under the Chairmanship of Mr. Injeti Srinivas, Secretary MCA to prepare an Investigation Manual for SFIO. Mr. Ashish Garg, President of Institute of Company Secretary of India (ICSI) is also one of the member of this Committee. The time line for preparing this Manual is 45 days from the first meeting of the Committee and submit it to MCA.

C. Terms of Reference for this High Level Committee are as follow:

1. To prepare an all-encompassing Manual for carrying out effective investigation in tune with the provisions of relevant Acts and comprising the procedures/techniques and methodologies for investigating officers.
2. To raise awareness of relevant Acts and Process to encourage Investigation Officers to uphold the highest standards of professional practice and conduct.
3. To assess and make recommendation based on past experience and cases, if any new learning is required by the Investigating Officer which may have an impact on investigation strategy or policy statement.
4. To contribute its expertise and insight to the reviews of existing process and recommending changes in it.
5. To analyse the investigating procedures followed by other investigating agencies and incorporate relevant procedures in the manual.
6. To develop more detailed analysis of issues in the light of corporate frauds and effective modalities to tackle challenges.
7. To provide practical and productive procedures for maintenance of records for the purpose of investigation.
8. To provide methodology for maintaining the investigation diary and updating the same by competent authority.

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: 2 :

9. To establish the Standard Operating Procedure (SoP) for taking the requisite approval of the competent authorities by the Investigating Officers.
10. To define the scope of powers and procedures required and conferred upon the Investigating Officers under various relevant Acts.
11. To prepare such kind of Manual which may plug all possible loopholes which affects the investigation or prosecution thereof
12. To analyse and specify the applicability of the Code of Criminal Procedure and Code of Civil Procedure to SFIO and its implications.
13. To provide advice and guidance on other matters as may be requested by Ministry and SFIO.

The Committee may invite any person(s) of appropriate standing, knowledge and expertise in the fields of economics, law, banking, investigation, etc.

D. Provisions of section 210 to 229 and 447 of the Companies Act, 2013

Section 210 and 212 of the Companies Act, 2013

The investigation into the affairs of a company shall be conducted by SFIO in the manner and by following the procedure specified in Chapter XIV of Companies Act, 2013.

Section 210 empowers the Central Government to assign the investigation into the affairs of a company to SFIO in following circumstances:

- (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 State Government

From **24th August, 2017**, SFIO has got the **powers to arrest** people for violations of companies law as the Government had notified provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013

Section 217 & 219 of the Companies Act, 2013

The Investigating Officer (IO) of SFIO shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:

- (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;
- (b) summoning and enforcing the attendance of persons and examining them on oath; and
- (c) inspection of any books, registers and other documents of the company at any place.

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: 3 :

Any disobeying of Order of IO by any director or officer of the company is punishable with imprisonment which may extend to one year and with fine which shall not be less than INR 25,000/- but which may extend to INR 100,000/-. Convicted Director or Officer under this section for any offense shall be disqualified from holding an office in any company.

IO has wide powers and with the prior approval of Central Government IO may require all the officers of the Central Government, State Government, Police or statutory authority to provide him assistance for the purpose of inspection, inquiry or investigation.

IO has also powers to make application to competent Court if he finds that evidence for his inquiry, inspection and investigation is, or may be, available in a country or place outside India. The court then may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request:

Section 219 of the Companies Act, 2013 gives wide powers to IO to conduct Investigation into Affairs of Related Companies, body corporate and its Directors and Officers etc.

Section 220 also gives power to IO to enter into any premises and seize the documents. The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply mutatis mutandis to every search or seizure made under this section

Section 221 gives power to Tribunal to order and direct, if it has reasonable ground to believe, that the Company or its Directors or Officers shall not transfer, remove or dispose of funds, assets, properties of the company during such period not exceeding three years.

Fraud u/s 447 of the Companies Act, 2013

Section 447 of the Companies Act, 2013 deals with punishment for fraud for which the punishment is ranging from a sentence of six months to ten years and a fine equivalent to the amount of fraud but may extend to three times. Such offence is non-compoundable, non-bailable and cognisable, with a minimum sentence of three years to those whose frauds are in conflict with public interest.

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: 4 :

Under Section 447 of the Act, the term 'fraud' has been defined to include any act, omission, concealment of any fact or abuse of position by any person with the intent to deceive, gain an undue advantage or injure the interests of the Company, its shareholders or creditors, whether or not there is any actual gain or loss.

The new definition of fraud under the Companies Act, 2013 uses the term 'person', thereby extending its application to not only directors, officers or employees but any other person in relation to the affairs of the company like statutory auditors, internal auditors, advisors, consultants, experts, independent directors or non-executive directors and valuers who are not the promoters or key managerial personnel, can also be held liable for fraud for acts or omissions which occurred within their knowledge.

In FY 2017-18 total 209 cases were referred to the SFIO , however the conviction rate still remains poor, only 39 investigations were completed and 44 prosecutions were filed in the National Company Law Tribunal (NCLT).

SFIO is taking help of technology for early detection of frauds through data analysis surveillance and usage of forensic tool to prevent corporate frauds.

E. Need to have new Manual in the light of emerging technology

With the passage of time everything changes like economy, technology, power, position, law and along with that opportunities and threats too. Businesses or Authorities need to revisit their Standard Operating Process (SoP), be it in any industry or field like education, health sector, aviation, legal, audit, compliance or government organisation to make it more effective and practical.

The internal assessment should be both ongoing and periodical through self assessment or by other persons within the organisation with sufficient knowledge of standard practices. The external assessments is also required to be undertaken at least once every five years by a qualified, independent assessor or assessment team from outside the organisation/ authorities. The external assessments can be in the form of a full external assessment, or a self-assessment with independent external validation.

Any SoP is required for following purposes :

- i. To ensure compliance standards are met
- ii. To know all requirements in advance and ensure its in place
- iii. To stick to timeline for best outcome
- iv. To prevent failures
- v. To be used for training

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: 5 :

For preparation of any Manual following steps are required:

- i. **Co-ordination** – ensuring that the process is managed, appropriately timetabled and that the views of participating authorities are captured prior to launch of the final methodology.
- ii. **Communication/ awareness** – ensuring a consistent approach to communicating the emerging methodology (including its risks, issues and benefits) to participating authorities, senior officers, members and external parties
- iii. **Methodology & recording** – working up the final methodology including, but not limited to, self-assessment, review approach and scoring, moderation and reporting.
- iv. **Meeting the Purpose** – ensuring that the benefits of such an approach are kept at the forefront of its development.
- v. **Timetabling and recruitment** – identifying the ‘roll out’ timetable for authorities to be reviewed and coordination of the recruitment of officers

F. **Content of Manual** The Manual for IO will be revisited and Committee shall be providing relevant manual encompassing all relevant acts, providing effective procedure for success in investigation, detailing powers, strategy and methodology to follow in certain circumstances, practical guidance and recommendation from past experience of members of the Committee or persons invited by the Committee. The Committee will strive to help SFIO to implement the SoP with awareness and implement process after analysing and approvals to ensure its managed effectively for countering fraud. These Standards must be based on certain principles like fairness, equity and accountability with transparency. This will bring good corporate governance culture in India with

Content of such Investigation Manual may be as follow :

1. Define ----WHY/ Purpose / AIM of Manual
2. Terminology or Definition in the Manual
3. Principles like Accountability, Confidentiality, Fairness , Ethics, professionalism
4. Design the Format of all processes/ procedures
5. Consider the people/ team involved and Roles and Responsibility of Team members
6. Define Scope of Investigation and Regulatory requirements
7. Process, Modalities Strategy –Internal / Cross Border frauds
8. Dealing with Complaints– Whistle blower, Inspection Report or order of CG
9. Powers to be used, logistics and search seizure equipment and other resources to be made available
10. Communication
11. Evidence- Forensic / electronic and Witnesses
12. Reporting and Reference Documents
13. Recording/ Investigating Diaries/safe custody
14. Sharing of information/ dissemination of information to other department/ authorities
15. Recommendation
16. Internal Research & Surveillance authority

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FATF:

The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. There are always people who are victimized and FATF works to have certain policies to bring about national legislative and regulatory reforms in these areas. There are 39 member countries in FATF. The aim of FATF is to ensure a coordinated global response to prevent organized crime, corruption and terrorism. FATF monitors countries to ensure they implement the FATF Standards fully and effectively, and holds countries to account that do not comply. While standard setting is the FATF's key role, the FATF also plays a role in supporting authorities to put the standards in practice.

The FATF discussed and approved the programme of outreach to national supervisors, which aims to explore ways of making supervision more effective. An objective of this effort is to encourage national supervisors and regulated entities to **focus more on outcomes than processes and to promote risk-based approach to supervision.**

India has also started efforts to maintain a central database to enable review of the effectiveness of its AML/CFT provisions

Conclusion:

SFIO is set up by MCA to achieve implementation of standards set by Financial Action Task Force (FATF) , encourage action to protect the financial system and plug the loopholes / deficiencies in the financial system ,if any. This High Level Committee will be taking help of knowledgeable and expert people in the field of banking, finance, investigation, cyber-crime, technology and economy to draft policy, process, strategy and finally Investigation Manual for SFIO to achieve its objective to stop white colour crime, punish the wrong doers and protect the integrity of the financial system, enhance its transparency which contribute towards global security.
