

Suggestions Regarding Rules Pertaining To Inspection, Inquiry And Investigation (SFIO) By Perry4Law

Dear Sir/Madam

At the outset, we at [Perry4Law](http://perry4law.com/) wish to thank MCA/SFIO for giving us a chance to express our “Views” on some crucial areas that we would be discussing subsequently in this document. We also wish to express our delight for and confidence in the existence and operations of an important organisation like Serious Frauds Investigation Office (SFIO) under the patronage of Ministry of Corporate Affairs, India.

Efforts of MCA and working of SFIO also give us an “Assurance and Confidence” that concepts and requirements of Corporate Social Responsibility and Good Corporate Governance would be achieved and followed to maximum in India. This is also a “Conducive Indicator and Facilitator” for Doing Business in India in a Fair, Transparent and Accountable manner.

We have been keeping a close watch upon the recent development pertaining to SFIO as we have similar interests and are ourselves running and managing the Exclusive Techno Legal [Cyber Crime Investigation Centre of India](http://ptlb.in/ccici/) [<http://ptlb.in/ccici/>] and [Cyber Forensics Research Centre of India](http://ptlb.in/cfrci/) [<http://ptlb.in/cfrci/>].

We can correlate ourselves with SFIO and other MCA related tasks in this regard as we have been managing cases of Trans Border Cyber Crimes, White Collor Crimes, Economic Offences, Banking Frauds and Corporate Frauds, etc.

As you know better, Crimes and Offences in Corporate and Non Corporate Worlds have changes dramatically. Their impact and effect upon general people/investors and Indian Economy are also nefarious in nature and they cannot be taken lightly anymore.

Perry4Law wishes to provide the following suggestions to MCA/SFIO/Indian Government in this regard:

(1) Public Private Partnership (PPP) Model: MCA/SFIO must fully utilise the “Public Private Partnership (PPP) Model” where the expertise of both Government and General Public are clubbed together to provide the best results. Section 211(2)(viii) of 2013 Act and the proposed Rule 14.1 and 14(2)(d) are good steps in the right direction as they not only include Professionals and Experts from diverse fields but also have a scope to add more on “Requirement Basis”. Section 211(4) would also help in fully utilising the PPP Model in most effective manner.

(2) Notification Of SFIO: Section 211(1) of the Companies Act, 2013 provides that the Central Government shall, by notification, establish an Office to be called the Serious

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Fraud Investigation Office to investigate frauds relating to a company. The Proviso to Section 211(1) provides that until the Serious Fraud Investigation Office is so established, the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section. Further, Section 212 (16) of the 2013 Act provides that notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

To avoid any potential “Legal Challenges” to the “Authority” of SFIO the Office of SFIO should be “Notified” as soon as possible. The “Powers and Responsibilities” of SFIO are “Significantly Greater” than those available under the 1956 Act and all cases that have already been registered under the 1956 Act and those that may arise under the 1956/2013 Act till it is notified via-a-vis Chapter XIV of the 2013 Act would be “Significantly Different” than those that would be registered once the SFIO is notified as under the 2013 Act.

Further, significant efforts and energy would be required to make SFIO “Completely Operational” and “Effective” with its extended Powers and Responsibilities and the sooner SFIO is notified the better it would be for the larger “Public Interest”.

The concept of “Public Interest”, as mentioned under Section 210(1) (c) and 212(1)(c) itself needs to be “Defined Broadly” to make the 2013 Act and SFIO more effective.

(3) Electronic Infrastructure: Rule 14(3)(i) provides that the Authorised Officer shall send a copy of the arrest memo to the office of Director, SFIO latest by the next working day through the quickest possible means including a special messenger or by way of secured electronic means, if required.

This is a good provision as it includes “Digital Mode” as well. MCA/SFIO must invest more on “Secured Digital Infrastructure” so that Corporate and Serious Frauds can be “Expediently Investigated and Reported” to and by the SFIO. All “Proceedings” of the SFIO must be “Digitised” at all stages.

(4) Manual Of Investigation: A Techno Legal Manual of Investigation, as mentioned in Rule 14.4, must be drafted for SFIO as soon as possible. It must include various “Scientific Methodologies”, including Cyber Forensics, E-Discovery, Digital Preservation, etc, that SFIO can use for Investigating various Crimes and Offences.

(5) Investigation Expenses: The provision regarding charging of Investigation Expenses from the Applicant and refunding the same on successful prosecution under Rule 14.5 is a good one as it would reduce the financial burden upon the SFIO Office. This would also keep the “Frivolous Prosecutions” at bay. However, there must be some “Penal Provision” as well that could be invoked against any Applicant (any member of General

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Public who is allowed to approach the Indian Government/SFIO in Public Interest) that has abused the process of prosecution of SFIO as the Investigation Expenses are affordable enough to be abused. Further, the prosecutions by SFIO must also keep in mind the mandates of National Litigation Policy of India that suggests minimum number of Litigations in Courts and resolving of various Disputes/Complaints at Government Department Levels itself before the Matter/Disputes/Complaints are agitated before Courts.

However, for matters and cases falling within the “Public Interest Category” no Security or Expenses must be demanded by the Government or SFIO and they must be Investigated free of cost. All cases filed under the Public Interest Category must be first “Scrutinised” by an Officer/Cell Appointed by the SFIO and if it is found in actual Public Interest then only the Compliant must be proceeded with. If such Public Interest Compliant is “Frivolous” or is an “Abuse of Process” of SFIO, Penal Actions, both Financial and Imprisonment, must be taken against the Applicant.

The Principles of Natural Justice and the Opportunity of Being Heard must be essential part of the process where the Officer/Cell would decide that an Application/Compliant is Frivolous or Abuse of Process of SFIO.

(6) *Financial Independence And Autonomy:* Indian Government/MCA must make “Separate Arrangements” for making the SFIO “Financially Independent” and “Autonomous”. Separate Rules and Regulations must be prescribed by Indian Government in this regard in more details. A full fledged and “Comprehensive Legal Framework” must be formulated by Indian Government for SFIO.

(7) *Modernisation And Trainings:* Modernisation of the SFIO must be undertaken and suitable Techno Legal Trainings must be provided to the Officers of SFIO so that they are well versed with issues like Cyber Law Cyber Crimes, Cyber Forensics, E-Discovery, etc. Cyber Forensics Tools and Software, including a “Mobile Cyber Forensics Lab”, must be provided to SFIO so that it can Investigate Techno Legal Crimes effectively and on the spot.

(8) *Foreign Companies And Websites:* With omnipresence of Foreign Technology Companies and Social Media Websites World over, suitable provisions must be incorporated within the Rules and Regulations governing SFIO to Investigate and Prosecute these Foreign Companies/Websites in India under Section 228 of the 2013 Act and other applicable Indian Laws.

(9) *Ambit And Scope Of SFIO:* Cross Border and Transnational Cyber Crimes, Financial Frauds, Multi Level Marketing Frauds, Online Financial Frauds, etc must be part of SFIO’s Objectives, Scope of Work and Functioning. It would not be a wise move to “Confine” the Scope of functioning of SFIO to few Crimes and Offences especially when modern crimes are Technology oriented and have Trans Border ramifications.

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(10) Crime Reporting And Public Participation: Crime Reporting by Public and Public Participation in furthering the Objectives of SFIO must be encouraged. Presently, that is missing from the activities of SFIO.

(11) RTI And Information Sharing System: With the “Expanded Role” and Duties of SFIO, public requests for information would increase. Even “Self Disclosures” under the Right to Information Act, 2005 would be different. Sufficient measures must be taken by SFIO in this regard in advance.

(12) Grievance Redressal Mechanism: A robust “Grievance Redressal Mechanism” must be established by SFIO to take care of Grievances and Complaints by various stakeholders.

(13) International Collaboration And Cooperation: The SFIO would be required to “Investigate” matters scattered in various Jurisdictions. This would require International Cooperation and Collaboration with Law Enforcement Agencies around the World. Suitable provisions must be drafted that can clarify and prescribe these Cooperative and Collaborative Powers and Procedures of SFIO.

An “Interactive Interface” between Interpol and SFIO Office must also be established. Extraditions issues must also be part and parcel of the same. Liaisoning with Foreign Government Departments and Organisation and Offices similar to SFIO must also be undertaken by SFIO through an “Interactive Interface”. These efforts cannot materialise till Indian Government/MCA “Notifies” these initiatives of SFIO in Official Gazette and upon its Websites.

(14) Public Awareness: The Public Awareness about the Role, Nature, Objectives and Functions of SFIO must be undertaken immediately. Presently very few Stakeholders are aware of the role of SFIO.

We hope you would find these Suggestions worth considering and implementation. Please feel free to seek any Clarification, Further Inputs or Techno Legal Support from our side.

Warm Regards

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