

“Serious Fraud Investigation Office: The White Collar Crime Controller”

Shruti Kulshreshtha¹
Symbiosis Law School,
Hyderabad

ABSTRACT

Designing the right legal system is the fundamental challenge when attempting to minimize the corporate frauds taking place in our country. The nexus between auditors and management is allegedly the primary reason for its rising trend. The Serious Fraud Investigation Office, which is a multidisciplinary investigation agency set up to investigate frauds of very a serious and complex nature, have changed the scenario. This paper acknowledges the complete timeline of corporate frauds, from the status of investigation of corporate frauds before the Companies Act, 2013, to emergence of SFIO through the Naresh Chandra Committee and its further development in curbing white collar crimes such as the power to arrest, Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017, introduction of EWS (Early Warning System) for detecting corporate frauds at an early stage.

Moreover, this paper provides a clear idea about the procedure to be followed while filing a serious fraud complaint. Landmark cases like the Satyam Scandal, Deccan Chronicle case etc., have been analysed keeping in the view the role of SFIO and its functioning. The writer intends to put forth her views by discussing technical as well as administrative issues faced by SFIO and attempts to give suggestions for the same.

Keywords: Investigation, Corporate frauds, Companies, Complaints, Scandals.

INTRODUCTION

Speaking economically, profit is the primary motivation for a company to gain success and longevity. The ultimate goal of a business is maximisation of profits with low cost of production². Corporate Social Responsibility (CSR) has gained a momentum in India in recent

¹ IInd Year, Symbiosis Law School. Hyderabad.

² Dey, Ajoy. (2009). *Profit Maximization*, RESEARCH GATE, <https://www.researchgate.net/publication/228216962>.

times, not only because the firms feel strongly to communicate their CSR efforts, but also, because it is mandated by the Companies Act, 2013^{[3][4]}. This is the well-being of the employees, investors, directors, customers, creditors and public. But the nexus between the auditors and management can cause issues in fulfilling CSR. The most common fraud techniques are improper revenue recognition, followed by overstatement of assets and bogus expense recognition. It can be noted that all these activities are reviewed by auditors and this is done either under some pressure or for abuse of power or because of close relations with the management⁵. It becomes really intractable to detect and curb such corporate frauds and so, this task is taken up by the Serious Fraud Investigation Office. To understand its functioning, let us first see what frauds are. Fraud is defined in the explanation to Section 447 of the Companies Act, 2013⁶ which states that any act, omission, concealment or misuse of position to gain wrongful corporate advantage is a fraud. Those frauds which are serious in nature are called serious frauds.

The Serious Fraud Investigation Office (hereinafter referred to as “SFIO”, for the sake of brevity) is an investigative office established under the Ministry of Corporate Affairs to discern and control the corporate frauds, or let’s say, the white collar crimes of the country. SFIO is set up as a multi-disciplinary agency to investigate frauds wherein experts from the fields of accountancy, forensic auditing, law, information technology, investigation, capital market and taxation⁷ come together to apply their specific skill sets in solving a corporate fraud as such frauds not only attract law, but various other disciplines as mentioned.

³ Section 135 of The Companies Act, 2013, requires the Board of the stipulated Companies to: “after taking in account the recommendations made by the CSR Committee, approve the CSR policy for the Company and disclose the contents of such Policy in its report and also place it on the company’s website, if any, in such manner as may be prescribed.”

⁴ Nayan Mitra, Asif Akhtar, Ananda Das Gupta, *Communicating Corporate Social Responsibility in the post mandate period: Evidence from India*, INTERNATIONAL JOURNAL OF CORPORATE SOCIAL RESPONSIBILITY, 2018, <https://jcsr.springeropen.com/articles/10.1186/s40991-018-0033-4#Sec29>.

⁵ To read more about fraud auditing in companies, refer Rocco R. Vanasco, (1998) "Fraud auditing", *Managerial Auditing Journal*, Vol. 13 Issue: 1, pp.4-71, <https://doi.org/10.1108/02686909810198724>.

⁶ Section 447, Explanation (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;

⁷ <https://www.sfio.nic.in>, ‘About Us’.

- **METHODOLOGY**

Scope of Study - This study is done keeping in mind the roles and functioning of the SFIO. It also talks about the history, developments and investigation procedures done under SFIO.

Data Collection Sources - The data in this study is majorly collected from the secondary sources (books, journals, articles, biographies). No primary sources are included.

Method of Analysis- The analysis is done primarily on the major points of the Companies Act, 1956 and 2013. This analysis is also done on the basis of various articles, journals, books and biographies.

Limitation of the study- This study is limited to the Indian Scenario only and talks about the serious frauds in India.

- **AIMS AND OBJECTIVES OF THE STUDY**

The objectives why this study is done can be listed into the following points:

- To know about the working of SFIO.
- To understand the complete timeline of SFIO.
- To analyse white collar crimes in light of SFIO precedents.

THE PRE-SFIO ERA.

- **PROVISIONS UNDER COMPANIES ACT,1956**

Although there were no express provisions about the SFIO under this act, still, corporate frauds came under the ambit of Central Government, whereby it had the powers to investigate:

- Into the affairs of the company⁸.
- Into the affairs of related companies⁹.
- Into the ownership of a company¹⁰.

Prior to the year 2003, before SFIO attained a legal status, reliance for the investigation of corporate affairs was placed U/s 235 to section 247 of the Companies Act, 1956. The Central

⁸ Section 235 and 237, Companies Act, 1956.

⁹ Section 239, Companies Act, 1956.

¹⁰ Section 247, Companies Act, 1956.

Government had the power, where the report had been made by the Registrar¹¹, to appoint one or more competent persons as inspectors to investigate and report, as it may direct.¹² Such inspectors may also be appointed if the Company Law Board is of the opinion that affairs of a company needs to be investigated upon its fraudulent/unlawful nature.

An investigation could be instructed only in public/ shareholder's interest, not in their dissatisfaction¹³. Upon the directions of the Central Government, the inspector may also inspect the affairs of the related companies or persons, in the course of their investigation by obtaining a prior approval from the government so that a notice can be issued to such body corporate.

During investigation, the Central government had certain discretionary powers such as it may appoint one or more persons as inspectors in the event of filing of a report to the Registrar¹⁴ to investigate into the Company's affairs¹⁵. Some powers are mandatory to exercise, like the company by Special resolution or the court by order, declares that the affairs of the company ought to be investigated by an inspector.¹⁶ The CLB¹⁷ can also declare to the Central Government for the appointment of such inspectors, if application has been made by a company having a share capital (received from not less than 200 members¹⁸ or 1/10th of total voting members)¹⁹ or having no share capital. The inspector can examine the Oath Officers, employees, agents of the company and present an interim or final report to the court about the investigation.²⁰

○ M.S.Shoes Fraud case²¹:

MS Shoes was a company established in 1986 which collapsed in 1995 causing huge loss to the market and investors. Pawan Sachdeva, the owner, used intriguing ads to attract investors. His shares were priced at Rs 24 in 1993 and reached at Rs 502 in 1995.

¹¹ Section 234, Companies Act, 1956

¹² Supra Note 7.

¹³ Binod Kumar Kasera v Nandlal and sons tea industries Pvt. Ltd. (2010) 153 Com Cases 184.

¹⁴ Section 234, Companies Act, 1956.

¹⁵ Section 235(1), Companies Act, 1956.

¹⁶ Section 237(a), Companies Act, 1956.

¹⁷ As and when the Companies (Second Amendment) Act, 2002, comes into force, the opinion of the tribunal will be seen instead of the CLB.

¹⁸ Shri Ramdas Motor Transport Ltd. v Tadi Adhinaratana Reddy, (1997) 25 Corpt LA 177: It cannot be institutes only on the allegations made by one shareholder of the company.

¹⁹ Section 235(2)(a), Companies Act, 1956.

²⁰ Section 241, Companies Act, 1956.

²¹ Ms. Shoes East Ltd. vs M/S. Subhash B. Dalal on 6 December, 2010, RFA No. 424/2001.

However, the share prices were manipulated and CBI started the investigation. In 1997, CBI was granted with the permission by the Central Government to levy charges on senior officials of SEBI and SEBI Capital Markets. Sachdeva was charged for infringement of Companies Act, 1956 and Prevention of Corruption Act. Unfortunately, CBI had to abandon the probe due to lack of evidence. In 2003, the case was reopened and several other charges were imposed for not returning back the money. In 2005, MS Shoes was declared a sick company by BIFR²².

○ Harshad Mehta Fraud²³:

Harshad Mehta was a SLR²⁴ broker between the banks. By the use of ready-forward (RF), which is a secured short term loan from one bank to another, he used to channel money from the banking system. The seller handed over the securities to the broker, who gave it to the buyer and the buyer handed over the cheque to the seller, who gave it to the seller. Generally, the seller and the buyer did not know each other, they only knew the broker. Mehta got Bank Receipts (BRs) issued by small banks like Bank of Karad and Metropolitan Co-operative Bank, for a fee. Later, Mehta was charged with 72 criminal offences and 600 civil suits were filed against him. He was arrested by CBI and banished from stock market by SEBI for misappropriating 2.8 million shares from 90 companies. He died on 31st December, 2001 with numerous cases pending against him.

THE SERIOUS FRAUD INVESTIGATION OFFICE

The Government of India, in August 2002, declared the setting up of a high powered task force to evaluate and assess the defence mechanism and management in the country for suggesting upon changes that are needed in the major defence projects. It was headed by Mr Naresh Chandra and is known as the Naresh Chandra Committee for Corporate Governance, which shows beyond doubt its significance in the birth of the SFIO. It was the time of the securities market scams in 2000-02, coupled with the failure of banking companies, episode of vanishing and plantation companies that this recommendation by the Naresh Chandra Committee came into sight and was promulgated by the government. The setting up of SFIO was approved on 9th January, 2003 and was announced that no other investigating office of

²² Board for Financial and Industrial Reconstruction.

²³ Harshad s. Mehta v Central Bureau of Investigation CrI.M(M)2508/92.

²⁴ Statutory Liquidity Ratio (SLR).

the Central Government or any State Government can continue with examination in such cases and in the event that any such examination has just been started, it can't be continued further with, and the concerned organization need to hand over the important reports and records in regard of such offenses to Serious Fraud Investigation Office. SFIO started its operations from 1st October, 2003. As per headings issued by the Government, the Serious Fraud Investigation Office had set up Market Research and Analysis Unit (MRAU) on 20.08.09 for gathering of foundation data with a view to search for early indications of corporate frauds and to break down and guzzle the best techniques and frameworks followed in different nations.

SFIO attained a statutory legal status only after the commencement of the Companies Act, 2013. It was set up under the jurisdiction of the Ministry of Corporate Affairs vide resolution dated 2nd July, 2003²⁵. It is a multi-disciplinary organisation headquartered in New Delhi and having field offices in other major cities of the country.

The investigation cases taken up by the SFIO are characterised by the following attributes:

- a) Complexity and having inter- departmental and multi-disciplinary ramifications.
- b) Substantial involvement of public interest in terms of monetary misappropriation or in terms of number of persons affected and
- c) The possibility of investigations leading to or contributing towards a clear improvement in systems, law of procedure²⁶.

The SFIO is led by a director not beneath the rank of a Joint Secretary to the Government of India having knowledge, skill and involvement in managing the issues identifying with corporate issues and furthermore composes of specialists from different orders²⁷. The other employees are from a varsity of backgrounds such as investigations, cyber forensics, financial accounting, management accounting, cost accounting, and any other fields so as to discharge efficient investigatory responsibilities. Such a constitution is essential because a company's investigation not only requires the skills of investigation but also abilities and knowledge about the working of a company and about its affairs. Under the Companies Act, 2013 it is provided that the duties of these employees are to arrange for all relevant information,

²⁵ Resolution No. 45011/16/2003-Adm-I

²⁶ Ramaiya, Guide to the Companies Act, 16th edn. p. 2525.

²⁷ Section 211, The Companies Act, 2013.

explanation, reasons, documents and assistance to the Investigation Officer as he may require for conducting the further investigation of the Company²⁸.

Without prejudice to the provisions contained in Section 210 of the Act²⁹, the Central Government may hand over the investigation of a Company to SFIO only in the following matters:

- (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 Government³⁰.

The inspectors assigned with the duty of investigation can also investigate the affairs of a company in the following cases:

- a. Any corporation which has been subsidiary or holding company or subsidiary of its holding company at any relevant period of time.
- b. Any corporation which has been managed by a managing director of the company in question or who is the managing director or manager of the company in question at any pertinent period of time.
- c. Any corporation who's Board of Directors consist of the nominees of the company in question or is habituated to conduct its activities according to, or on the directions of the company in question.
- d. Any person who has been the Managing Director, manager or employee of the company in question³¹.

INVESTIGATION under Companies Act, 2013

Keeping in mind the end goal to get respectability and quickening examination in serious frauds, when any case has been allocated by the Central Government to the SFIO for examination under this Act, no other investigating authority of Central Government or any

²⁸ Section 212(5), Companies Act, 2013.

²⁹ Section 210: Investigation into the affairs of Company.

³⁰ Section 212(1), The Companies Act, 2013.

³¹ Section 219, Companies Act, 2013: Power of Inspector to conduct investigation into the affairs of the company.

State Government is liable to continue with examination in such case in regard of any offense under this Act and on the off chance that any such examination has just been started, it will not be continued further with and the concerned office will deliver the significant documents and records in regard of such offenses under this Act to SFIO³². The company along with its officers, employees and representatives, who are or have been under employment of the organization, are obliged to supply all relevant data, clarification, documents and coordinate to the investigating officer as he may require for organizing the investigation. SFIO will administer the investigation in the way and manners prescribed in Chapter XIV³³ of the Companies Act, 2013 and present its answer to the Central Government within such period as might be indicated in the order³⁴.

Now the question arises that, which offences is the SFIO permitted to investigate upon? The answer to this question is in Section 212(6) of the Companies Act, 2013. It specifies that the following offences of the Companies Act, 2013 can be covered by SFIO and will fall under the ambit of fraud of corporate nature:

- a. Section 7(5) and (6): Furnishing of false information and suppressing of any material fact for the incorporation of the company.
- b. Section 34: Misstatements in prospectus.
- c. Section 36: Inducing someone to invest money, fraudulently.
- d. Section 38(1): Personation for acquisition of securities of the company.
- e. Section 46(5): Issuing of duplicate Certificate of shares, fraudulently.
- f. Section 56(7): Transfer of shares by a depository or depository participant fraudulently.
- g. Section 66(10): Intentional concealment or misrepresentation of name and amount of claim of the creditor of the company.
- h. Section 140(5): Fraudulent activity of the auditor of the company.
- i. Section 206(4): Carrying business for an unlawful purpose and not addressing the grievances of the investors.
- j. Section 213: When employees of the company produce an application revealing the fraudulent or dishonest activities conducted by the company.

³² Section 212(2), Companies Act, 2013.

³³ Inspection, Inquiry and investigation, Sections 206-229, Companies Act, 2013.

³⁴ Section 212(3), Companies Act, 2013.

- k. Section 229: Furnishing false statements, mutilation and destruction of documents.
- l. Section 251(1): Fraudulent application for removal of name.
- m. Section 339(3): Liability of fraudulently conducting the business.
- n. Section 448: Providing false statement by a company.

Any body corporate that commits any of the offences listed above shall be liable to be investigated by the SFIO and will attract the punishment of fraud u/s 447 of the Act. This is a cognizable offence and no person liable under this provision will be released on bail by way of surety satisfaction or upon bond. However, the only situation wherein the accused person will be granted bail is that, if the Public Prosecutor has been given sufficient opportunity for opposing the application of such release and is successful in proving to the court on reasonable grounds that the accused is not guilty of the offence and it is not likely that he will commit such an offence when on bail. The proviso of Section 212(6) of the act affirms that the other situation in which bail shall be granted is when the person is under sixteen years of age, or is a woman or is sick or infirm and only the Special Court holds authority to grant bail in such circumstances.

Nonetheless, the conditions of granting bail are subject to the limitation specified under the Code of Criminal Procedure, 1973³⁵ or any other act on granting bail which may be prevalent at that time³⁶.

INVESTIGATION REPORT

During the investigation process and upon the direction of the Central Government, the SFIO submits an interim report to the Central Government within the specified period³⁷. This report consists of the preliminary findings, discoveries and detections about may be the seriousness of the investigation, people and companies involved, type of fraud etc. Once the investigation is completed, SFIO shall submit a final report about the delineating the details of the investigation to the Central Government³⁸. A copy of the final report is easily accessible to any person concerned by filing an application in the court. Now, the Central Government, upon receiving the investigation report, examines it thoroughly and, if it may deem fit, order the SFIO to commence the prosecution of the company and its officials or employees and/or

³⁵ (2 of 1974).

³⁶ Section 212(7), Companies Act, 2013.

³⁷ Section 212(11), Companies Act, 2013.

³⁸ Section 212(12), Companies Act, 2013.

any other person who is directly or indirectly connected to the affairs of the concerned company.

The investigation report filed with the Special Court for the framing of charges will be deemed to be filed by the Police under Section 173³⁹ of the Code of Criminal Procedure, 1973, and not by SFIO. For the sake of better investigation, any other investigation agency, police authority, income tax authorities etc. are supposed to transfer any information or documents related to the Company to the SFIO.

In all the above statements, one thing should be clear that judicial proceedings are different from investigation proceedings. Investigation proceedings are quasi-judicial in nature⁴⁰.

NEW DEVELOPMENTS IN THE NEW ERA

- **POWER TO ARREST**

The SFIO was given legal status vide the Companies Act, 2013 but it attained the powers to arrest in connection to the investigation of a company later, on 24th August 2017 by the introduction of Company (Arrest in connection with investigation by Serious Fraud Investigation Office) Rules, 2017⁴¹ (hereinafter referred to as 'The Rules, 2017'). The Government has given a green signal to the SFIO for making arrests of the directors, Key Managerial Persons (KMPs) and any other person found under suspicion of committing offence under the Companies Act, 2013. According to the notification, the Director, Assistant Director or Additional Director of the SFIO is vested with the power to arrest any such person whom they have reason to believe that such person is liable to be punished under Section 212 of the Act, excluding any government company or foreign company⁴². The proviso of this rule provides that if such an arrest is being made by the Additional or assistant Director, then a written approval of the Director is mandatory. All the final decisions related to the arrest pertain to the Director of SFIO.

In the case of Government and foreign companies, the SFIO can arrest any official only after attaining a written application for approval of arrest by the Central Government⁴³. These rules

³⁹ Report of police officer on completion of investigation.

⁴⁰ Coimbatore Spinning & Weaving Co. Ltd v. M.S Srinivasan (1959) 29 Comp. Cases 97 (Mad).

⁴¹ http://www.mca.gov.in/Ministry/pdf/companiesArrestsconnectionSFIORule_25082017.pdf

⁴² Rule 2(1) of the Rules, 2017.

⁴³ Rule 3 of the Rules, 2017.

were drafted with great sensitivity and attention because arrest is a serious issue and when it comes to the matter of arrest of senior officials of reputed companies, it not only puts the reputation of the person at stake, but also causes great financial, economic and social downfalls for the company and its employees at large. The power of arrest is can be misused and the records have the potentiality to be manipulated easily for intently causing such harms. Hence, these rules offer strict procedures for the arrest by the SFIO.

In the case of *Rohtas Industries Ltd. v SD Agarwal*⁴⁴, it was held that a serious fraud investigation can immensely damage the company and should be avoided without proper material. Investigation and arrest, being serious matters, should not be ordered without having strong and satisfactory grounds.

For exercising its powers U/S 212(8) of the Act, the Director, Assistant or Additional Director should sign the arrest order and the personal search memo⁴⁵ before serving them to the arrestee and obtain a written acknowledgement of the service from him⁴⁶. The respective copies of both the forms along with the essential documents should be forwarded in a sealed envelope to the Office of Director, SFIO within 24 hours via the fastest medium of transfer. This is done only after self-attesting each page of the documents, so forwarded; by the Director himself⁴⁷. Such person arrested should be produced before a Judicial Magistrate or a Metropolitan Magistrate, whoever has the jurisdiction, within 24 hours of the arrest, exclusive of the travelling time taken.

Moreover, a register is maintained with the SFIO, known as the arrest register at the Office of the Director. In this arrest register, the particulars of the arrestee, date and time of the arrest and other important information related to the arrest is entered immediately after receiving such information by the arresting officers⁴⁸. All these documents should be preserved for a minimum period of 5 years either from the date of the final order of the Trial Court (when the judgement is not impugned in an appellate court) or from the date of disposal of the case

⁴⁴ 39 Comp Cas 781: AIR 1969 SC 707: (1969) 1 SCC 325: (1969) 1 Comp LJ 350: (1969) 3 SCR 108 (SC 3 member bench).

⁴⁵ Both, The Arrest Form and the Personal Search Memo, have been attached as appendix at the end of the paper.

⁴⁶ Rule 4 of the Rules, 2017.

⁴⁷ Rule 5 of the Rules, 2017.

⁴⁸ Rule 6 and 7 of the Rules, 2017.

before the final appellate court (when the judgement is impugned in an appellate court), whichever is later⁴⁹.

The SFIO, while exercising this power, should bear in minds that their actions can have far reaching consequences for companies in terms of governance, compliance, risk controlling process and adhering to investor's interests. Although, the Rules provide sufficient safeguards for controlling and avoiding any kind of abuse of power by the SFIO, still due care should be taken in dealing with such issues.

- EARLY WARNING SYSTEMS

The SFIO wants to leave no possibility of escape under the white collar crimes and is laying down a system to even find a needle in the haystack. One of the upcoming developments, which is being worked upon under the covers, is the introduction of Early Warning Systems in the companies. A consulting agency has been set up by the SFIO and is engaged in designing the conceptual framework of the system. This is basically, an alert system to know about the corporate frauds at a premature stage so that their occurrence can be halted, thereby saving the losses of not only the investors but of the economic scenario of the country at large. The proposition of developing a EWS first floated after the Satyam scam in 2009.

The new framework would use MCA 21 database as essential information alongside information accessible from other administrative associations and outer sources including online networking, that aid in distinguishing potential frauds.

It would create the information that aide in raising warnings, red flags and alerts utilizing business insight and examination capacities. It would help in shielding financial specialists from getting misused by the mendacious organizations or people. Additionally, it would help in distinguishing organizations for additional examination, investigation or scrutinized examination by Registrar of Companies (ROCs), other workplaces of Ministry of Corporate Affairs, or by the SFIO. The framework would protect against disturbances caused by corporate fraud occasions, by proactively checking the activities of the organizations, through the statutory reporting components and other information accessible in the general public space.

⁴⁹ Rule 8 of the Rules, 2017.

For this system to become a success, social media platforms will play a quintessential role to detect and scan the activities of a company under suspicion of committing a corporate fraud.

“The system does not require any human intervention and would be able to spot companies filing wrong reports in the system,” a MCA official said.

The main motive behind the establishment of EWS system is the abolition of shell companies. Shell companies do not have active or traceable business operations or any assets on their own name and are primarily set up for illegitimate purposes. The issue of anonymous corporations has been widely identified in a parade of reports and studies as crucial in combating a range of high-priority international problems: the drug trade, organized crime, terrorism, money laundering, tax evasion, corruption, corporate crime, and systemic financial instability⁵⁰. It is otherwise difficult to check upon the accounts of the companies with the RoC, but EWS will be able to detect artificial intelligence, hence improving the governance in the corporate world.

It was alleged that MCA had shared data of 17000 crores of suspicious deposits by privately held organisations. The only issue is that this is an upcoming system and is not completely developed in the country. SFIO is putting all its efforts for making this system a revolutionary success in the corporate domain but still a lot of ground work remains.

PROCEDURE TO FILE A COMPLAINT

It becomes really essential to file a complaint when a person knows or has the reason to believe that a serious fraud has been taken place in a particular company, for the reasons of good governance and attaining a strong market in the securities domain. Not only the investor’s interest must be safeguarded but also the consumer protection, international economic tranquillity and financial firmness are the key reasons for reporting about a corporate fraud. For this, such a person must be aware of the FAQs while filing a complaint of a serious fraud.

Any aggrieved person against the activities or conduct of a company or an investor can file a complaint with the Registrar of Companies (RoC) or the Ministry of Corporate Affairs. Also,

⁵⁰ Sharman, J. (2010). Shopping for Anonymous Shell Companies: An Audit Study of Anonymity and Crime in the International Financial System. *The Journal of Economic Perspectives*, 24(4), 127-140. Retrieved from <http://www.jstor.org/stable/20799176>.

there are no fees to file a serious fraud complaint. The steps required to file an online complaint are:

- Visit the official website of Ministry of Corporate Affairs which is www.mca.gov.in
- One of the pre-requisites is the CIN or the Corporate Identity Number of the company against whom you are filing this complaint.
- On the MCA website, place your cursor on 'MCA Services' and a huge drop down will occur indicating all the services provided by the MCA.
- In the drop down, there is a section named 'Complaints' and under that click on the sub-section of 'Create Investor/ Serious Fraud Complaint.'
- Once you reach the next webpage, it will read as- 'To file a complaint, please upload - Investor Complaint Form or Serious Investor Complaint Form, available under Company Forms Download'. The words "Company Forms Download" will be in blue, linked to all the online forms available at the website. Click on the blue link.
- Now, Company Forms Download will be visible and when the page is scrolled down, the complainant will reach the sub-heading of 'Investor Services.' The complainant can avail the e-form and the instruction kit to fill the e-form of the 'SERIOUS COMPLAINT FORM.'

The e-form and the instructions to be followed while filling up the form are annexed at the end of the paper.

PRECEDENT CORNER

Although the following case has been dealt after the establishment of the SFIO, still since it is an investigation agency, no particular mention has been made about SFIO for the sake of confidentiality. Satyam Computers Scam was investigated by the SFIO in record three months of time. This scandal of worth Rs.7,200 crores caused loss of Rs. 14,162 crores (approx.) to its speculators in 2009, has occurred with the assistance of review firm PricewaterhouseCoopers which is enormous blow for corporate administration in India. The job and risk of Independent chief were likewise held suspicious. Satyam Computer Services Ltd offers data innovation (IT) administrations spreading over different divisions, and was additionally recorded on the New York Stock Exchange and Euronext. Satyam's system has secured 67 nations crosswise over six landmasses. SFIO scrutinized the autonomous chiefs and found that professedly at the command of the administrator and other best officials of the

IT monster. SFIO finished up had no information about the distortion of records and exaggerated benefits that happened advancement focuses in India at Bangalore, Chennai, Pune, Mumbai, Nagpur, Delhi, Kolkata, that the Independent chiefs of Satyam were not engaged with the multi-crores bookkeeping extortion in the IT organization and were kept oblivious by the executive.

Deccan Chronicle Holding Ltd. was another company which came under the lens of the SFIO. This was a loan default case taken place in Hyderabad by DCHL which owns English daily Deccan Chronicle and Asian Age. The issue was that they were unable to repay the loan of Rs.1,230 crores(approx.) during 2009-2011 and also faced some financial irregularities. Moreover, there were several violations to the Companies Act, 1956 which could not be overlooked. After due and diligent investigations, SFIO made a report and stated that money was availed by company by the sale of non-convertible debentures and other financial papers by various banks. Later on, the company was declared a sick company by the Board of Financial Reconstructions (BIFR), but still the lenders took action against the company under the SARFAESI Act.

The renowned Saradha Chit Fund trick of West Bengal was examined by the SFIO. The examination was requested by the Corporate Affairs Ministry, in 2013, after enormous open objection over the trick that hoodwinked several simple speculators by running false cash pooling plans in the attire of chit reserves. In excess of 60 organizations, the majority of them from the eastern conditions of the nation, which are accepted to have duped people, in general of their cash, are being examined by SFIO. In interim reports, SFIO had said that organizations under the scanner enjoyed genuine monetary fumble other than redirecting the assets by their promoters, who abused administrative gaps. There has been expansion of inventive monetary items in the market because of innovative headway and broad utilization of the web to market such items to speculators. It has been seen that SFIO has no capacity to settle cases without anyone else. It manages examination of corporate fakes portrayed by unpredictability and having between departmental, multi-disciplinary consequences and furthermore having significant contribution of open enthusiasm for terms of fiscal misappropriation or regarding number of people influenced. It presents the detail and investigation report, on finishing of the examination to the Central Government. The Central Government, after examination of the report, may give the further directions.

Recent investigations:

SFIO recently received an order for investigation of Mehul Choksi, ICICI Bank and L&T. SFIO is also investigating in the 114 companies which are directly or indirectly linked to Nirav Modi and Mehul Choksi with regard to the Punjab National Bank scam. The Government had assigned probes of 29 listed companies in the last five years to SFIO out of which 4 investigations are completed and prosecutions have been filed.

The Investigation of Fortis for the recovery of Rs 500 crores from Singh Brothers is also handed over to SFIO and is being taken place currently. SFIO is also probing the alleged financial irregularities of Aircel as well as two group entities- Aircel Cellular and Dishnet Wireless, which are debt-laden due to the intense competition and entry of new players in this sector. Not only this, Companies such as Ruchi Soya, Sterling Biotech and Kanishk Gold are under the lens of SFIO and a probe is being taken place against them.

The SFIO is dealing with many probes recently, the only problem being faced by it is the under employed staff to handle such number of probes. There is also a need for more regional offices in the country so as to facilitate efficacious results and the strength to deal with wider range of companies. Currently, SFIO is having its headquarters in Delhi and 4 regional offices in Mumbai, Hyderabad, Chennai and Kolkata.

SUGGESTIONS AND CONCLUSION○ Technical as well as Administrative issues

The statute provides all possible situations which can arise while dealing in the subject of white collar crimes, which are assiduous in nature and difficult to curb. However, there exists certain issues, for which even committees have been set up for recommendations, but are not abided by the Central Government. With the ticking clock, the complexities of frauds are thickening and SFIO needs to be backed up with more and more precaution. Some of the technical and administrative issues having the scope of change are:

1. Inadequacy of manpower- According to the 40th recommendation of the 17th report⁵¹ made by the standing committee of finance, it has been explicitly stated that the Central Government has failed to appoint enough employees that it was

⁵¹ Government of India, 17th Report: Standing Committee on Finance see Para no. 40, (Ministry of Corporate Affairs 2014-15).

expected to employ. A time period of 3 months was given to the Central Government to recruit the required manpower, but it seems that this time was also not enough. Such an inactive approach of the Central Government will yield no success rates, even after the drafting of such self-sufficient provisions for SFIO. The 13th report⁵² of the standing committee of finance clearly mentioned the difference between the actual and the sanctioned strength of SFIO:

Sanctioned Strength	Actual Strength	Vacancies
130	55	75

2. Early Warning System's slow development

In the era of technology, there can exist a tactic to each and every regulation imposed on the people. SFIO has already revealed about the introduction of the EWS but this system is still under development. The progress made by SFIO in this sector is quite slow and dissatisfying. The detection has failed miserably indicating under preparedness of SFIO and if fast actions are not taken, people will be able to find hacks to get out the regulations that the EWS will put forth in the near future. This will leave no use of the to-be-revolutionary system of fraud detection.

3. Receipt of Sanction for Prosecution by Ministry of Corporate Affairs with delay.

In the working of SFIO, the vital responsibility is of the Central Government and there may be case wherein it neglected to sanction Investigation and prosecution due to which the accused company got a chance to wreck material proof. For instance the central Government delayed the sanction for prosecution in the Saradha Chit Fund case, although, no such errors arouse, yet in the coming future such inconsistencies may emerge.

o Suggestions

The SFIO is laden with a duty that is strenuous to perform and tough to curb: the menace of corporate fraud. Although from the above reading it is assumed that the functioning of SFIO is not hampered till now, but it carries great potent of being misused. Predominantly, there is a need to raise the question of dependency of SFIO on the Central

⁵² Government of India, 13th Report: Standing Committee on finance on Demands for Grants see page no. 18, (Ministry of Corporate Affairs 2015-16).

Government, when there exist a possibility of involvement of officials of the Central Government too. For example, when the sanction of prosecution in the matter of Saradha Chit Fund case was untimely, it may have been because of the dishonest intent of the Central Government officials, where the question of transparency and accountability may arise. Hence, there is a scope of amendment in the functioning of SFIO in the following matters:

a. SUO-MOTU power to investigate

Even after SFIO attained a legal status by the Companies Act, 2013, the investigation cases are assigned to it by the Central Government. The Central Government exercises more than the required control on the functioning of SFIO and limits the prospects in which it can grow. SFIO should be given suo-motu power and independence to take up cases and investigate upon them. The further prosecution procedure can be handed over to an Ombudsman Independent Committee created within the SFIO under partial control of the Central Government.

b. Proper and timely recruitments

As discussed earlier, SFIO doesn't focus on the timely recruitment of officials in the office. For the effective functioning and investigation, an intellectual team with sufficient members is one of the basic requirements of the SFIO. Under staffing leads to high payroll costs, low work quality, increase in employee stress and missed growth opportunities. This will not yield the desired results and the whole purpose of SFIO will stand defeated.

c. Need for more number of Regional Offices

The head office of SFIO is in New Delhi and it has 4 branches in Mumbai, Hyderabad, Kolkata and Chennai. For the investigations to become more efficacious, SFIO should expand its reach in the whole of India by increasing the number of regional offices in the country. This will facilitate covering of a wide range of companies and will ensure better results thereof.

o Conclusion

As per the official website of SFIO, it has completed a total of 312 investigations from the financial year 2003-04 to 2016-17. This indicates that the SFIO is performing well to curb the corporate frauds. This also reflects the government's concern to manifest good corporate governance in the country, as the corporate sector can have some significant

and far-reaching consequences of the economy. On 25th July, 2014, the Minister of State for Corporate Affairs Nirmala Sitharaman announced that SFIO has detected corporate frauds more than the worth of Rs 10,800 crores during its probe in a time period of three and a half years. This the rate at which SFIO works even after some of its short comings. Despite its recent inception, with each stepping stone that the SFIO is keeping, it is day by day becoming more capable in equalising with the performance of serious frauds offices in other jurisdictions. The tendency of committing corporate frauds in growing and hence the role of SFIO is becoming crucial progressively.