

COMPANIES ACT,2013

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SPECIAL COURT

SPECIAL COURTS (Section 435)

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The Central Government may for the purpose of drafting speedy trial of offences under this act by intervention establish or designate as many as special courts as may be necessary.

The Special Court shall consist of single judge appointed by Central Government with concurrence of Chief Justice of High Court within the jurisdiction the judge be appointed as working.

Before the appointment the person appointed as judge should be holding office of session judge or additional session judge.

Offences Trialable by Special Courts

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- ❑ All offences under this Act.
- ❑ Where person accused of, or suspected of commission of an offence under this Act is forwarded to Magistrate under this section or under section 2A of code of criminal procedure 1973, such court may
 - ❑ Authorise **detention of such person** in such custody for not exceeding **15 days (Judicial Magistrate)**.
 - ❑ For **7 days**, if Magistrate is **Executive Magistrate**.

Offences Trialable by Special Courts

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- ❑ In addition to the offence under this act:
 - ❑ Special Court may also try offence other than under this Act.
 - ❑ With which accused may be charged under CRFC, 1973 for such trial.
- ❑ May try in a **summary for an offence** which is punishable with **imprisonment upto 3 years**. Provided **no sentence of imprisonment is passed for more than 1 year**.
- ❑ All appeal against the order of Special Court shall be before High Court.
- ❑ Provisions of CRPC shall apply to proceedings before Special Court.

Power of the ROC / Inspector

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- ❖ All powers as are vested as in Civil Court under CPC namely:-
 - ❖ Discovery on production of books of account and other documents.
 - ❖ Summoning and enforcing the attendance of the persons and examining them on oath.
 - ❖ Inspection of books and registers and other documents of company at any place.

Penalty for non-compliance of section 207 (Inspection)

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- ❖ In case any director contravenes any above said provision he shall be deemed to vacate his office and shall be dis-qualified for holding office in any company.
- ❖ Penalty for disobeying any order of ROC every officer shall be punishable of imprisonment upto one year and fine of Rs.25,000 to Rs,1,00,000/-.

Report on Inspection

- ❖ The report of the Registrar or inspector may include the recommendation of further investigation.

Search and Seizure by Inspector

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- ❖ In case the registrar or inspector has reasons to believe that books and papers related to the company, KMP's, Director, Company Secretary in practice are likely to be destroyed, altered, falsified, he may :-
 - ❖ Obtain the order from Special Court for seizure of books and papers.
 - ❖ Can enter the place or place where such books and papers are kept.
 - ❖ seize such books and papers for **180 days**.
 - ❖ Further take order for period of 180 days.
 - ❖ ROC can take copies of all the records seized by him before returning to the company.

Investigation

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- ❖ Central Government
- ❖ SFIO.
- ❖ Tribunal

Constitution of the Investigation team by SFIO

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- 1) Company and its officer shall provide all the assistance to the investigating team for the investigation.
- 2) The SFIO has power to arrest officers and such person shall not be released on bail or his own bond unless public prosecutor has given opportunity to oppose the same.
- 3) Before taking such person into custody SFIO shall intimate him ground for such arrest and SFIO shall produce such person within 24 hours to the Judicial Magistrate or Metropolitan Magistrate as the case may be.

Investigation by SFIO

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- 4) Special court shall take cognize of offence only if complaint is filed by Director SFIO or any officer of Central Government.
- 5) SFIO shall file interim and final report.
- 6) On receipt of the SFIO report Central Government may direct for the prosecution against the company's officers.

Investigation by Tribunal

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Eligibility:

- ❖ Not less than 100 members or $1/10^{\text{th}}$ of total voting power
or
- ❖ Not less than $1/5^{\text{th}}$ of total numbers (company not having share capital)
- ❖ Tribunal may order for the investigation in the affair of the company only in following circumstances :-
 - ❖ The business is being conducted with intend to defraud.
 - ❖ The person connected with incorporation of the company are guilty for fraud or Misfiseance

Investigation by Tribunal

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- ❖ Members of the company have not given all the information with respect to its affairs.

Penalties:-

- ❖ If on investigation it is proved that business is conducted to intend the defraud, the person involved in the formation of the company guilty of fraud, the officers shall be punishable u/s 447.



THANK YOU