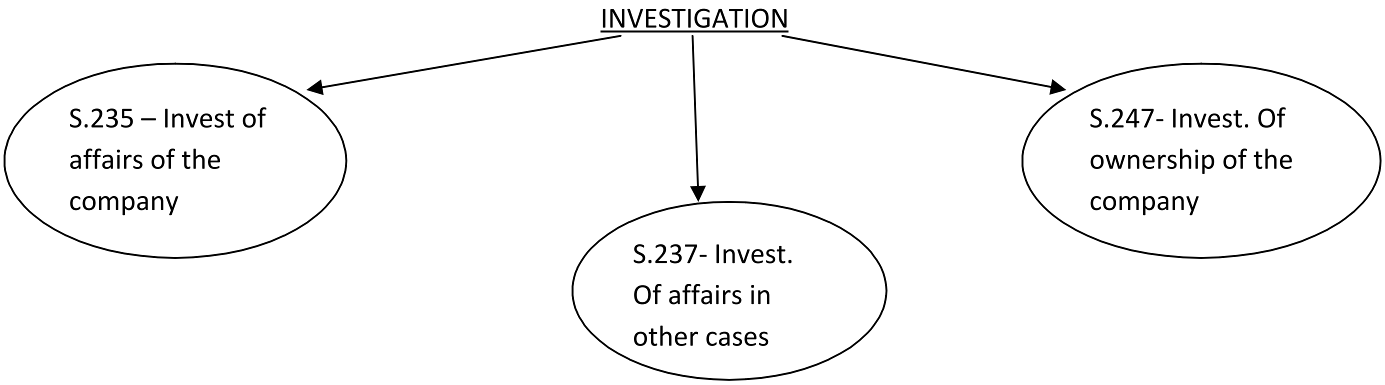
INVESTIGATION - Sections 235 – 251 of the Act (COMPANIES ACT 1956)



S.235- Investigation of affairs of the company – Cent Govt on the basis of a report of Registrar 234(6) or 234(7) will appoint inspectors to investigate. Also in case of a company having share capital an application for investigation received from not less than 200 members or in case of no share capital companies from members holding not less than 1/5th of the persons can cause the Tribunal to declare investigation after giving the parties an Opportunity to be heard. (Note – 234(6) and (7) deals with the power of registrar to call for information or explanation)

S. 236 – Application to the above must be supported by evidence and may require also security to be given.

S.237 - Invest. Of affairs in other cases – Case a) If the company passes a special resolution or Court order, Central Govt can declare investigation of affairs of the company.

Case b) In the opinion of the tribunal there are circumstances suggesting that business of the company is conducted with an intent to defraud its creditors OR persons connected with the formation or management of the company is guilty of fraud, misfeance etc OR members have not been given information with respect to certain matters including commission to managing or other director etc. C/G can order investigation

S.238 – Firm, body corporate or association cannot be appointed as inspector

S.239 – Power of Inspectors to carry out investigation of affairs of related companies – Investigator appointed u/s 235 and 237 can investigate affairs of the following companies – a) Subsidiary of the above mentioned company b) companies having M/D or Manager of the above company holding c) companies which are managed by BOD or directors of the above company d) companies whose directorship is held by employees of the above company

S. 240 –Production of docs and evidence - To the inspector by officers and employees of the company

S.240A – Seizure of documents by inspector – If justified during the course of investigation.

S. 241 – Inspectors report – Shall make interim or final reports to the C/G. Copies can be obtained on payment of required fee by – a) member b) creditor c) applicants of the investigation d) to the court where investigation in pursuant to S.237 e) Tribunal in pursuance to S.235(2)

S.242 – Prosecution – Based on report U/s 241

S.243 – App for winding up company or an order U/s 397 or 398- Based on report U/s 241 if it appears to C/G.

S.244 – Proceedings for recovery of damages or property – Based on report U/s 241 – appears to C/G that any person connected with formation or promotion of the company has been guilty of fraud, misfeance etc or for the recovery of any property wrongfully retained or misapplied.

(Note – S.630 contemplates **penalty** for wrongful withholding of property. It should not be confused with S. 244)

S.245 – Expenses of Investigation – Investigation U/s 235, 237 shall be first defrayed by the C/G. But later, it will be recovered from the following persons –a) person convicted U/s 242 b) any company or body corporate against whom proceedings are brought to the extent of sum determined under those proceedings c) unless there is prosecution U/s 242 – the M/D or the managers or the applicants U/s 235

S. 246 – Inspectors report to be evidence – In any legal proceedings

S. 247 – Investigation of ownership of the company – Appears to the C/G there is good reason to find the true persons who are financially interested in the success or failure whether real or apparent of the company or who have been able to control or materially influence the policy of the company.

Without prejudice to the above, if the Tribunal in the course of any proceedings declare by an order that the affairs of the company ought to be investigated (for the reasons above) then C/G can appoint Inspectors U/s 247. Expenses shall be defrayed by the C/G out of moneys provided by Parliament unless C/G declares that it is to be borne by the applicant of the investigation. (There is no defrayment in the first instance as in S.245)

S. 250 – Imposition of restriction upon shares and debentures and prohibition of transfer of shares or debentures in certain cases – In connection with proceedings U/s 247 or on a complaint made by person in this behalf - Tribunal also gives similar opinion to place restrictions – for a period not exceeding 3 years restriction can be imposed by the TRIBUNAL. During the period of restriction - any transfer of those shares, any issue of the shares will be void, no voting rights, no right shares in respect of those shares, no payment in the nature of dividend or capital (except in case of liquidation)

Sub Section 3 says **WHERE A TRANSFER OF SHARES HAS TAKEN PLACE** and as a result change in composition of BOD is likely to take place, Tribunal can direct that – a) no voting rights in respect of those shares b) resolution to change the composition of BOD not to take effect unless confirmed by the Tribunal.

(Note Sec. 398 (1)b speaks about similar restriction. But here only members can apply for such restriction in case of mismanagement)

S. 250A –Voluntary winding up of company etc not to stop Investigation proceedings

S. 251 – Saving for legal advisors and bankers – This is a protective section whereby a Legal adviser to whom any privileged communication is made in that capacity (except names and address of clients) and in case of a Bankers of the company any information about their clients **other than such company or body corporate or person** will not be required to disclose such information to the C/G, Registrar or to an Inspector appointed by C/G.

(Note – Disclosure to Tribunal is not exempted by S.251.)