

## Maintenance and inspection of documents in electronic form (Sec 120) (Part-2)

*Continued from Geeta Saar 70<sup>th</sup> edition*

### 4. Option to companies to maintain records in electronic form

While this section allows every company to maintain the records and registers in electronic format, rule 27 mandated every listed company or a company having not less than 1000 shareholders, debentures holders and other security holders to maintain its records in electronic format. However, vide the Companies (Management and Administration) Second Amendment Rules, 2014 effective from 24.07.2014, the word 'shall' was replaced with the word 'may'. Hence, for the companies enumerated in rule 27, such maintenance of records in electronic mode has become optional. The word 'records' has been defined in the explanation to rule 27 to mean any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

The existing companies fulfilling the above criteria were mandated to convert data from physical mode to electronic mode within six months from the date of notification of provisions of section 120. However, vide the same amendment, this conversion is made optional.

### 5. Manner of maintenance of records

Rule 27 (2) gives discretion to the board to decide the manner of maintaining the records. However, it lays down certain criteria which shall be ensured by the board. They are as follows:

- a) the records shall be maintained in the same formats and in accordance with all other requirements as prescribed in the Act or the rules;
- b) the information required under the provisions of the Act or the rules should be adequately recorded for future reference;
- c) the records must be capable of being readable, retrievable and reproducible in printed form;
- d) the records shall be capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;
- e) the records, once dated and signed digitally, shall not be capable of being edited or altered;

- f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.

Hence, the mode being decided by the board shall ensure the integrity of data being preserved and at the same time, shall comply with all provisions of the Act regarding inspection and other accessibility.

## 6. Security of records maintained in electronic form

The responsibility of maintenance and security the records maintained in the electronic form has been given to the managing director, company secretary or any other director or officer of the company as the Board may decide. For the purpose of charging any other person with the responsibility, a board resolution shall be passed to the effect.

The person so responsible has been charged under rule 28 (2) with the following duties:

- a) to provide adequate protection against unauthorized access, alteration or tampering of records;
- b) to ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- c) to ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
- d) to ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
- e) to ensure that the computer systems can discern invalid and altered records;
- f) to ensure that records are accurate, accessible, and capable of being reproduced for reference later;
- g) to ensure that the records are at all times capable of being retrieved to a readable and printable form;
- h) to ensure that records are kept in a non-rewriteable and non-erasable format like pdf version or some other version which cannot be altered or tampered;
- i) to ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic

form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the board;

- j) to limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the board in this behalf;
- k) to ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- l) to arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- m) to take necessary steps to ensure security, integrity and confidentiality of records.

It should be noted that the responsibilities of the person with reference to records are multi-fold. They include preservation of data, proper signing of records and preventing unauthorised use of the records.

## 7. Punishment and Compoundability

### 7.1 Contravention of section

This section does not prescribe any penal provision for contravention of the section. Hence, section 450 of the Act will be applicable. Accordingly, the punishment for contravention, the company and every officer of the company who is in default shall be punishable with a fine upto Rs. 10,000, where the contravention is a continuing one then the fine shall be Rs.1,000 for every day of contravention.

### 7.2 Contravention of rules

As per rule 30 of Companies (Management and Administration) Rules, 2014 contravention of rules made under this section, the company and every officer of the company who is in default are punishable with a fine upto Rs.5,000, where the contravention is a continuing one then the fine shall be rupees 500 for every day of contravention.

The offenses committed under this section and rule are compoundable under section 441 of the Act.

*(Concluded)*

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*