

## Books of Accounts etc. to be kept by the Company (Sec 128) (Part-3)

(Continued from Geeta Saar 76)

### 6. Maintenance of books of account in electronic mode

Sub-section (1) of section 128 of the Act enables the preparation and keeping of Books of Account, books and papers, financial statement in electronic mode. A company may keep books of account in electronic mode in such manner as may be prescribed in the rule 3. For the purposes of this rule, the expression “electronic mode” includes “electronic form” as defined in clause (r) of sub-section (1) of section 2 of Information Technology Act, 2000 (21 of 2000) and also includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) as defined below:

**“electronic form”** with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

**“electronic record”** means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent use. Such books of account and other relevant books and papers shall be retained completely –

- a) in the format in which they were originally generated, sent or received, or
- b) in a format which shall present accurately the information generated, sent or received and
- c) the information contained in the electronic records shall remain complete and unaltered.

Other general requirements for keeping Books of account in electronic mode shall be as under:

- a) The information received from branch offices shall not be altered and it shall be kept in a manner where it shall depict what was originally received from the branches.
- b) The information in the electronic record of the document shall be capable of being displayed in a legible form.
- c) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate. Such records shall not be disposed of or rendered unusable unless permitted by law.

- d) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.
- e) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement
  - i. the name of the service provider;
  - ii. the internet protocol address of service provider;
  - iii. the location of the service provider (wherever applicable);
  - iv. where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

## 7. Inspection by the Director

As provided in sub-section (3) of section 128, the books of account and other books and papers maintained by the company within India can be inspected by the director either at the registered office or such other place where the books are maintained during business hours. In case of any financial information maintained outside India, copies of such financial information can be produced subject to rule 4 (2) to (4). The said rule provides that the director shall furnish a request to the company mentioning the details of information required. Such request needs to be made by director himself and not through power of attorney or agent or representative. The company shall produce such information within 15 days of request.

In *Vakharia v. Supreme General Films Exchange Co. Ltd.* [(1948) 50 BOMLR 140] the judge stated that “I do not think, therefore, that the argument that a person can exercise his right of inspection through his agent only if he is unable effectively to take inspection has any substance in it. Of course it may be that in a proper case it is open to the party opposing inspection to show that the person seeking inspection is guided by improper motives, and if he succeeded in doing so the Court may refuse inspection through an agent. The principles that apply to the right of inspection of a partner are to my mind equally applicable to the right of inspection conferred on a director under Section 130(2) of the Indian Companies Act. Stebbins in his *Company Law and Precedents*, 3rd edn. Vol. II, at p. 909 states, “a person entitled to inspect is prima facie entitled to employ an agent or expert to inspect at his instance.” The authorities relied upon for this proposition are the cases of *Beavan v. Webb*, *Norey v. Keep*, and *Dodd v. Amalgamated Marine Workers’ Union*, which I have referred to earlier, I think the ratio of these cases is equally applicable to the right of a director to inspect accounts, and I, therefore, hold that under Section 130. a director is entitled to take inspection of accounts not only personally but through an agent, provided there is no reasonable

objection to the person chosen as agent and the agent undertakes not to utilise the information obtained by him for any purpose other than the purpose of his principal.” Hence, the inspection may be done by a properly authorized agent. In the same case, it was also held that the right of inspection is a statutory right and the restrictions placed through the articles are ultra vires.

Section 128(3) covers not only the books of account but also the other books and papers. The scope of the term is very wide. The Madras High Court, in *K. Kanagasabapathy vs. T.M. Shanmugham* [(1972) 42 Comp. Cas. 596 (Mad.)], held that ‘other books and papers’ will not include all books and papers. It was held that “Section 209(4)(a) of the Companies Act 1956 directs that the books of accounts and other books and papers shall be open to inspection by any director during business hours. What is the legislative intent behind the expression “other books and papers”? Can it be reasonably construed to embrace “the nomination paper”? At page 289 of Maxwell on the Interpretation of Statutes, [1859] 28 L.J. M.C. 213, twelfth edition, the following passage occurs as to how associated words in a common sense have to be understood: “When two or more words, which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.” In the expression “books of account and other books and papers” occurring in Section 209(4)(a) of the Companies Act, the words “other books and papers” are more general, whereas the words “books of account” are less general. But the more general words take their colour from the less general and become restrictive in meaning. Even if the ejusdem generis Rule is applied, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended—vide *R. v. Edmundson*. It would then follow that the expression “other books and papers” must be construed as referring to other books and papers of the same kind as the books of account. The pattern of the different clauses in Section 209 of the Companies Act along with the heading “Accounts” would also point to the same conclusion. As pointed out by Maxwell at page 11 of the book cited supra, the headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections, and that though they cannot control the plain words of the statute, yet they may explain ambiguous words. It is true that while the court is entitled to look at the headings in an Act of Parliament to resolve any doubt, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section where there cannot be any doubt as to their ordinary meaning. In my view, it would be dangerous to construe the words “other books and papers” to embrace every scrap of paper in the office of the company, whether it is in the nature of a book of account or not. The sub-heading to Section 209 of the Companies Act is “Books to be kept by company and penalty for not keeping proper books”. This sub-heading emphasises the fact that the words “proper books” have a restricted meaning and refer only to books in the nature of accounts. Originally, Section 209(4) of the Companies Act did not contain the

words “other books and papers”. These words were added by Section 20 of the Companies (Amendment) Act, 1965. The Joint Select Committee’s Report explained the object of the amendment in the following words : “It is proposed to redraft Sub-section (4) with a view to making it clear that the Registrar of Companies or any officer authorised in that behalf may inspect the books of account and other books and papers of the company without giving any previous notice to the company or any officer thereof, if sufficient cause exists for such inspection and take copies of and put identification marks on the documents so inspected. Opportunity is also taken to make it obligatory on the company and its officers to produce the necessary books of account, etc., for inspection by the Registrar or any other officer and to give them all possible assistance in connection therewith.” It is, therefore, clear that the object of the amendment was to cover not only books of account, strictly so-called, but also books showing such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed in the case of companies engaged in production, processing, manufacturing or mining activities, within the meaning of Section 209(1)(d) of the Companies Act. Clause (d) of Section 209(1) itself was inserted by Section 20 of the Companies (Amendment) Act, 1965, and it was to cover the records relating to the particulars mentioned in Clause (d) that the expression, “other books and papers” appears to have been used. I, therefore, hold that this expression does not extend to the nomination papers, which the complainant wanted inspection of, and that the failure of the secretary to give inspection thereof does not constitute an offence within the meaning of Section 209(5) of the Companies Act.”

The inspection in respect of any subsidiary of the company shall be done only by a person authorized in this behalf by a board resolution of the holding company. The person authorized need not be the director of the subsidiary company.

## **8. Inspection by the member**

In case of section 8 companies, members can inspect the accounts as per the clause 9 of Form INC 13(Memorandum of Association) issued under rule 19 (2) of Companies (Incorporation), Rules 2014. In case of other companies, this right is not available.

## **9. Preservation of books of account**

Sub-section (5) of section 128 provides that books of accounts and vouchers relevant to any entry in such books shall be preserved for a period of 8 financial years immediately preceding a financial year. Where the company is in existence for a period lesser than eight calendar years, books in respect of all preceding years are required to be maintained. Central government may direct such preservation for a longer period as it may deem fit where an investigation has been ordered under Chapter XIV. Listed companies are further required to follow document preservation policy formulised as per regulation 9 of the SEBI (LODR) Regulations, 2015 as given below.

Regulation 9. The listed entity shall have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows

- (a) documents whose preservation shall be permanent in nature ;
- (b) documents with preservation period of not less than eight years after completion of the relevant transactions:

Provided that the listed entity may keep documents specified in clauses (a) and (b) in electronic mode.

## **10. Punishment and compoundability**

On contravention of the provisions of this section, managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section are made liable for punishment. In case no person is charged with the responsibility by the Board then it seems that legislature intend to make all the officers of the company liable for prosecution. The concerned person is liable for punishment for a term of upto one year of imprisonment or with a minimum fine of Rs. 50,000/- which may extend to Rs. 5.00 lacs or both. The offence under this section is compoundable with the permission of the special court as provided in clause (a) of sub-section (6) of 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.*