



INTERNAL

Legal Clarification :

Notification by ministry of corporate affairs on August 2022 for the Companies (Accounts) Fourth Amendment Rules, 2022.

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DETAILS OF THE AMENDMENT BY MINISTRY OF CORPORATE AFFAIRS

1. Short title and commencement.-

(1) These rules may be called the Companies (Accounts) Fourth Amendment Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette

In the Companies (Accounts) Rules, 2014, in rule 3,-

- (i) in sub-rule (1), for the words “accessible in India”, the words “accessible in India, at all times,” shall be substituted;
- (ii) in sub-rule (5), in the proviso, for the words “periodic basis”, the words “daily basis” shall be substituted;
- (iii) in sub-rule (6), after clause (d), the following clause shall be inserted, namely:-
 - a. “(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.”.

Reference link : <https://egazette.nic.in/WriteReadData/2022/238055.pdf>

CLARIFICATION

The MCA notification is with respect to **maintenance of books in electronic format**. Tabulated below are the provisions pre and post amendments and implications thereof basis on legal advisors understanding.

Sl. No.	Provision before amendment	Amended provisions	Implications
1.	The books of account and other relevant books and papers maintained in electronic mode shall remain <u>accessible in India</u> so as to be usable for subsequent reference.	The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times so as to be usable for subsequent reference.	The provisions for accessibility of books of accounts in electronic form in India is now tightened vide this amendment and the books of accounts shall be accessible <u>at all times</u> . The existing provisions were silent on the timeline of the accessibility.
2.	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 <u>periodic basis</u> .	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 daily basis .	The periodicity of backing-up servers on which the company maintains its books has been amended from periodic basis to daily basis.
3.	-	Inclusion of the following clause (e) to Rule 3(6) of the Companies (Accounts) Rules 2014 where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.	This amendment is on the annual reporting requirements and is applicable where the service provider is located outside India . The additional requirement is for providing name and address of the person who has control over the books of accounts. Kindly note, that there is lack of clarity on whether the 'person' in control of the books of account and other books and papers in India, is required to be a person within the organisation or whether the term includes a person outside of the organisation (i.e. team of service provider etc.)

ADDITIONAL DETAILS

Definition of the terms “books of accounts” and “books and papers” as defined under the Companies Act 2013:

2(13) of the Companies Act 2013: “books of account” includes records maintained in respect of:

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;
- (iii) the assets and liabilities of the company; and
- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

2(11) of the Companies Act 2013: “book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and **registers maintained on paper or in electronic form.**