



INTERNAL

Legal Clarification :

Section 128 of the Companies Act, 2013 read with Rule 3 of the Companies (Accounts) Rules, 2014 provides for the legal requirement for maintaining books of accounts of a company.

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REQUIREMENT OF KEEPING BOOKS OF ACCOUNT (SECTION 128)

Law details of Section 128

Maintenance of books of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

- (i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines “books of account”.
- (ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.
- (iii) The books of account must be kept on accrual basis and according to the double entry system of accounting.
- (iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches.

“books of account” as defined in Section 2(13) 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.

PLACE OF KEEPING BOOKS OF ACCOUNT

Below is the law interpretation by the customer for place of keeping the books of account

Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. When the Board so decides the company is required within seven days of such decision to file with the Registrar a notice in writing giving full address of that other place.

Maintenance of Books of account in electronic form

The maintenance of books of account and other books and papers in electronic mode is permitted and is optional. Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent use (the

Companies (Accounts) Rules, 2014 hereinafter referred in this Chapter as Rule) (Rule 3(1)).

The information contained in the records shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the

information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered (Rule 3(2)).

The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches (Rule 3(3)).

The information in the electronic record of the document shall be capable of being displayed in a legible form (Rule 3(4)).

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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 and such records shall not be disposed of or rendered unusable, unless permitted by law:

Provided that 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. (Rule 3(5))

The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement -

- (a) the name of the service provider;
- (b) the internet protocol address of service provider;
- (c) the location of the service provider (wherever applicable);
- (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider. (Rule 3(6)).

CLARIFICATION

As per Section 120 of the Companies Act, 2013 read with Rule 27 of the Companies (Management and Administration) Rules, 2014 – **“Every listed company or a company having not less than 1000 shareholders, debenture-holders and other security-holders may maintain its records, as required to be maintained under the Act or Rules, in electronic form.”** The Companies, which were covered under this Rule were given an option to convert its data maintained in physical mode to electronic mode within 6 months from the date of notification i.e. 31.03.2014. Also, the Companies, which are not covered under the ambit of the above provision have an option to maintain the books of accounts either in physical form or electronic form.

As per Section 128 of the Companies Act, 2013, a Company may maintain its books of accounts in electronic form at the Registered Office of the Company or any other place in India, other than Registered Office as may be decided by the Board. In the event of maintaining the books of accounts at any other place in India other than the Registered Office, a notice in writing shall be filed with the Registrar in Form AOC-5 within 7 days of such decision along with full address of the place of maintenance. It is noteworthy that the Board may even decide to maintain the books outside India as well and if they so decide then the Rules discussed below would apply.

If a Company chooses to maintain its books of accounts outside India in electronic form then 2nd proviso to Section 128(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Accounts) Rules, 2014 shall be applicable.

Rule 3(1) - **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 reference.**

Rule 3(5) - 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 and such records shall not be disposed of or rendered unusable, unless permitted by law:

Provided that 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.

As per **Rule 29 of the Companies (Management and Administration) Rules, 2014** – Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof.

Having said that, please note the following –

- Companies in India can maintain books of accounts in both physical and/or electronic form.
- If the company maintains the books of accounts only in physical form, they can decide the location to keep the physical record and, accordingly, inform the ROC re the location by filing the required form, as mandated under Sections 128(1) and 128 (2).
- If the company decides to maintain the books of accounts only in electronic form, then, they necessarily have to keep the server in India (they can have multiple servers and can keep the accounts in server outside India as well).
- If the company wants to maintain books of accounts in electronic form and do not have servers in India, then, they would be required to also necessarily keep the physical true copies (read, original) at the registered office or the location that the Board decides and informs the ROC accordingly, as mandated under Sections 128(1) and 128 (2).

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