Storage of Registers in the Electronic format

- Legal Background

Can Storage of Registers in the Electronic format Possible, A big Dilemma! Let us analyse it.

Two things which have to be first answered are:-

1. Does the Companies Act, 1956 allow storage of Registers in the Electronic format?
2. Does the Companies Act, 1956 allow Maintenance of Registers at the place other than the Registered Office of the Company?

Primarily we need to first examine the provisions of the Companies Act, 1956, Information Technology Act, 2000, Indian Evidence Act to answer the aforesaid questions.

Companies Act, 1956

Under the Companies Act, 1956, a company is required to maintain certain registers and records. There are some other registers and records, the maintenance of which is not statutorily required but is essential for the smooth, efficient and systematic functioning of the company.

Some of the registers and records are required to be kept open by a company for inspection by directors and members of the company and by other persons, including creditors of the company. The right to inspect such registers and records is an enforceable right. Companies are also required to allow extracts to be made from certain documents, registers and records and to furnish copies of certain documents, registers and records on demand by a member or by any other specified person. Government authorities have the right of access to all registers and records. Non-compliance with the provisions relating to maintenance, preservation and inspection of registers and records, to the extent they are statutory, creates punishable offences and leads to various penalties on the company, the directors and every officer in default.

The term record of register is not defined in the Companies Act, 1956. Pursuant to Section 2 of the Companies Act, reference can be made to the Depositories Act, 1956 for words and expression not defined in the Companies Act, 1956. Section 2(1)(i) of the Depositories Act, 1956 define term “ record” to include the records maintained in the form of books or stored in a computer or in such other form as may be determined. Thus preliminary investigation reveals that record can be kept in the electronic format unless otherwise required under the Companies Act, 1956.

Information Technology Act, 2000

Now we move on to the Information Technology Act, 2000. This act permits the maintenance of registers and records in electronic mode. Such registers and records should be maintained in accordance with the provisions of the said Act.

The Information Technology Act, 2000 (the IT Act) was passed interalia to provide for electronic governance. Section 3 of the Act provides for authentication of electronic records. It says that any electronic record can be authenticated by a person by affixing his digital signature. This section also provides for the minimum technology required of the digital signature. The electronic record would be converted in to a message digest, by using ‘hash function’ which is intended to ensure the integrity of the communication of the electronic record

Section 4 of the IT Act says that any information or other matter required by any law to be in writing can be in electronic form. Section 5 says that where any law requires any information or other matter to be authenticated by the signature of any person, when such requirement shall be deemed to be satisfied, if such information or matter is authenticated by means of digital signature affixed in the manner provided by the Rules.

Now coming to the provisions of Section 7 of the Information Technology Act, 2000 which provides for retention of electronic records. The said section reads as under

"(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if –

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records."

It has to be further noted that the section 9 of the of the Information Technology Act, 2000 inter alia provides that section 7 does not confer any right upon any person to insist that any Government Ministry or Department or statutory authority should accept any document in the form of electronic records.

The Indian Evidence Act, 1872

Now we move on to the questions of admission of electronic records and transmissions in the law of evidence. Law presumes paper-based documents as proof of transactions. Difficulties arise when records are kept in the electronic forms. Law of Evidence has to ensure that electronic transmissions and electronic records will have the same value as paper based documents and digital signature would be equally legal as a manual signature. The Indian Evidence Act,1872 revolves around two types of evidence – oral evidence and documentary evidence. Documentary evidence is of two types – primary evidence and secondary evidence. Primary evidence is where the original self is available. Secondary evidence is where the contents of the original will have to be proved by leading in further evidence. Electronic records challenge this very assumption since every electronic record is an original as well as in duplicate. In other words it is primary as well as secondary evidence at the same time. To get over this complex situation special provisions (sections 65A and 65 B) have been incorporated in the India Evidence Act, 1872 through the Second Schedule of the Information Technology Act, 2000. The said sections provide for proving the contents of electronic records.

It is pertinent to note that the MCA has inserted section 610C, 610D and 610E in the Companies Act, 1956 so as to make provision for electronic filing system and for payment of fees through electronic form

The substance of the above discussion is that if the Companies Act, 1956 do not provide expressly for maintenance of electronic register & records by the Companies, the Companies would be automatically entitled to maintain the records electronically subject to the conditions laid down in section 7(1) of the IT Act, 2000.

Now we move on to the question of maintaining the registers at the place other than the registered office of the company. Attention is invited to Section 163 of the Companies Act which provides for maintenance of Register and Index of members / Register and Index of Debenture holder at the registered office of the company. However the said section permits the company to keep the aforesaid registers at the place other than the registered office of the company within the same city or town provided the same is authorizes by a special resolution of members.

The strict legal interpretation of the above suggest that though the company can maintain the registers in the electronic format but not all registers can be kept at the place other the registered office of the company.

Software

Software available in the market for maintenance of register as required under the Companies Act 1956 is not many. The following software are available in the market for the proposed usage.

1. Archimedes - http://www.archimedestechlaw.com
2. iPro ver -7.5.1- http://www.delve.co.in
3. ‘Secretarial Organizer’ - www.probityoutsourcing.com
4. iPro - http://www.sinewave.co.in