



Directors' Special : Section 189 of The Companies Act, 2013

There are around twenty one statutory registers to be kept by companies pursuant to the Companies Act, 2013. All the registers, records, minutes, books and paper, documents etc. (herein after collectively mentioned as “the records”) to be kept are routine affair of the companies and non compliance of it attract penal provision(s). The penal provision(s) are for both company and its officers in default for all the records and for almost all the other sections, except directors sacrosanct section 189 which deals with register of contract or arrangement in which directors are interested. This particular section imposes penalty **only** on directors and that too on **all** the directors, making it directors’ special.

As per Rule 16 (3) of the Companies (Meetings of Board and its Powers) Rules, 2014 the register of contract or arrangement in which directors are interested {herein after referred as register(s)} shall be preserved “*permanently*” and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose. The register(s) should be in Form MBP 4.{Rule 16(1) of the said Rules}. Since the register(s) are required to be preserved permanently in Form MBP 4, the law is silent about the faith of existing register(s) of the companies maintained pursuant to section 301 of the erstwhile Companies Act, 1956 in old format. The instant questions that arises are whether companies have to convert all data(s) in new format or it is sufficient to keep register in new format after notification of said Rule, whether data(s) should be again acquired in case of old existing companies as erstwhile Companies Act does not mandates for permanent preservation of register(s). On exploring more of Act and the Rules, the Rule 27 to 29 of Companies (Management and Administration) Rules, 2014 requires every listed company to mandatory keep records on the electronic mode with detailed guidelines to be followed with respect to maintenance, inspection, security and making copies of record maintained in electronic form. The Rules clarify to convert all existing records in physical mode to electronic mode within the period of six months from the date of notification of section 120 of the Companies Act, 2013, ie 1st April, 2014. A combined reading of these two rules make position of listed companies explicit clear to convert existing register(s) in new form MBP 4 and also in electronic format, but the situation is not crystal clear for companies other than listed

companies, i.e unlisted public companies, private companies, small companies etc. forming majority in this form of organisation.

Again the Rule 16(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 also specifies that the register(s) shall be kept at the *registered office* of the Company. While going through definition of “books and paper” and “book or paper” in terms of section 2(12) of the Companies Act, 2013, it is found that it includes registers. Further, language of section 128(1) of the Companies Act, 2013, is “every company shall prepare and keep at its registered office books of account and *other relevant books and papers* and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any,.....” Here registered office includes branch office or offices without mentioning whether such offices should mandatorily be located in India or not. A panoramic view of the Act along with Rules, depicts that while section 189(3) of the Companies Act, 2013 and Rule 16(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 specifies place of keeping register(s) at the registered office, section 2(12) of the Companies Act, 2013 read with section 128(1) the Companies Act, 2013 along with its provisos contradict the specific place and broaden the scope of keeping register(s) at registered office, branch office or offices (anywhere) and also any other place in India with some compliances.

Amid all the complexities and confusion, while the penal provisions are made more stringent by asking five times more moola than that of the erstwhile Companies Act, 1956, entire onus of compliance is on all the directors, making them feel really special.

Note: Readers can share their comments at yoginakochar@yahoo.co.in

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