E-Voting Revolution – In Pursuit of Better Corporate Governance

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E-Voting is a process that allows casting of votes through electronic mechanism. Despite its advantages, the system is susceptible to misuse and manipulations and hence calls for suitable cyber security to prevent misuse.

INTRODUCTION

Literature has shown that countries with strong democratic traditions are not yet using electronic voting systems intensively, given citizens’ and policy makers’ concerns about the security of such systems. To date, commercially available technology requires an infrastructure that poses complex technical challenges for reliability and security. Despite our technological process, e-voting technology does not yet provide a completely “secure e-transaction environment”. Some claim that e-voting will never be error-free and that it is nice in theory, but that in practice, the risks are too large.

The contradictions are apparent: most countries in the developed world have held off adopting e-voting systems given their concerns about security and their knowledge of the implications of insecure systems for democracy. However, costly technological systems are being imposed in less developed countries.

Indian stock markets have recently seen a phenomenal growth in volumes as well as in number of investors. Today, between the two depositories, NSDL and CDSL there are more than 1.60 crores Beneficial Owners Accounts. Most of these account holders are retail investors. These investors by virtue of their equity holding are the ultimate owners of the companies issuing the equity. The legislature provides for their participation in the overall management of the companies by exercising the voting right in the relevant meetings of the shareholders of the companies.

E-VOTING REVOLUTION

E-Voting is an internet based system through which shareholders can login and register their votes on company resolutions. The system would process, record votes automatically and facilitate declaration of voting results quickly. It is believed that E-Voting system would be relatively more efficient, convenient and cost effective. The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 issued by Central Government under Section 642 of the Companies Act, 1956, includes electronic voting.

An issue which has been the subject of recent interest is the possibility of company shareholders voting for the purposes of a shareholders’ meeting by electronic means - through the internet or by email.

With this revolutionary development, shareholders can now cast their votes on corporate proposals through the click of a mouse without having to worry whether their response has reached the company or not. The e-Voting system would permit a company or its registrar to set up the schedule on the e-voting website and upload the resolution and register of shareholders. The online voting system is aimed at enhancing corporate governance and increasing shareholder participation in listed companies, and is a common feature in advanced countries like the United States, United Kingdom, China, Japan, Australia and South Korea.

Electronic voting offers shareholders convenience and alternatives for attending a shareholder’s meeting. Furthermore, shareholders coming from remote area can easily exercise their proxies without traveling. Last but not least, the inability of attending shareholders’ meetings accidentally scheduled on the same day can thus be easily avoided.

Shareholders have no better way to get their point across than
to vote. The government agrees and is urging investors to vote early and often. But the mechanics of shareholder voting do not reflect the technological capabilities of the 21st century; the paper-based system is cumbersome and expensive. One alternative is electronic voting. There is no way to make company boards feel more accountable than to force them to poll their shareholders on crucial issues.

USE OF INFORMATION AND COMMUNICATION TECHNOLOGY IN GENERAL MEETINGS

One of the central issues of information and communication technology in company law matters relates to the admissibility of electronic voting, being the shareholder directly casting his or her vote with the Company. Although this type of voting is considered very desirable by most listed companies, it is not without consequences. At present, the general meeting is still an assembly of shareholders, few or many, gathering in a specific place and expressing their opinion on the future of the Company in light of the statements made by the Board and questions posed by the shareholders. By allowing for electronic voting, there is a danger that the mechanism of the general meeting might be reduced to a mere voting device, without any discussion and little possibility for shareholders to have any impact on the decision. The general meeting will end up in a system of adding up the votes cast.

It is useful to distinguish between electronic voting during the meeting and distance voting. The former does not raise specific problems, as it merely is an alternative technique for counting the votes. The second is much more controversial: here voting may occur while the meeting is taking place, or before the meeting, the votes having been cast and stored in the electronic ballot box.

LEGAL FRAMEWORK

To increase the participation of retail investors in the decision-making process of companies, the Ministry of Corporate Affairs notified the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001. However, due to the large number of shareholders, this option also has received a limited response. A more convenient means for exercising the voting rights will help to increase shareholder participation in the decision-making process. Rule 2(b) of The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 defines postal ballot as:

“Postal Ballot” includes voting by shareholders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company.

Also, the proposed Companies Bill, 2009, has provision for offering electronic voting facility to shareholders for resolutions placed at General Meetings. Thus, e-Voting system can be used not only for electronic voting for postal ballot, but also at General Meetings, once the Companies Bill is passed.

LEGAL DIFFICULTIES

Specific provisions allowing electronic voting exist under Australian law, and under the laws of American states, Canada and the United Kingdom. Necessary amendments to the Companies Act would be necessary to make it clear that electronic voting is permissible, subject to appropriate safeguards. The risk in allowing electronic voting is that, if as a matter of law that does not comply with the Companies Act, the whole shareholders’ meeting, and the resolutions passed at it, could be invalid.

The position needs to be clarified by legislation. Specific provisions allowing electronic voting exist under Australian law, and under the laws of American states, Canada and the United Kingdom. Similar provisions are proposed to be inserted in the Indian Companies Act by the Companies Bill, 2009.

BENEFITS TO COMPANIES/REGISTRAR AND TRANSFER AGENTS

- The voting process will be faster and cost efficient
- Reduce administrative cost of postal voting as there will be no need to get the physical votes back, no verification of signature and counting of ballot votes
- Increased accuracy
- Faster results
- Reduces the time involved in sending the notice and completing the entire process.

BENEFITS TO SHAREHOLDERS

- Participation in the decision making process
- Ease of voting
- Invalid votes cannot be cast
- Transparent process
- Impersonation not possible.

BENEFITS TO CAPITAL MARKET

- Fairness of a voting platform provided by third party wins more trust from the society
Reduce cost of proxy process for the capital market
Enhance efficiency of proxy process for the capital market
Promote investors awareness of “Shareholder’s Democracy” concept
Materialize and fortify company’s perception of “Corporate Governance”.

INTERNATIONAL SCENARIO

European Union (EU)

The European Parliament recently gave its approval to the proposal that was agreed upon by the Council. The possibility of voting by electronic means strengthens the position of small investors and thus prevents random majorities. Moreover, the new rules will contribute to the further integration and continued stability of the European capital market. The Directive removes obstacles which previously had to be overcome by shareholders if they held shares in companies listed in other EU countries and wanted to exercise their rights there.

The days when small investors with company shareholdings in another Member State did not learn of important shareholder decisions until the day after the general meeting took place are therefore now in the past. Now every shareholder can participate in real time.

Article 8 of the European Shareholders’ Rights Directive obliges Member States to provide listed firms with the right to offer their shareholders electronic participation in the general meetings, being electronic voting one of the suggested mechanisms. Shareholders’ electronic voting has been contemplated by Spanish Company Law since 2003.

United Kingdom

In UK, every FTSE (Financial Times Stock Exchange) 100 companies now allows electronic voting or is taking steps to do so. This increase is expected to cascade rapidly into the next tier of companies by market capitalisation. There has also been more use of electronic voting facilities by institutional investors over the year, although take up is still not universal and not all institutional votes are cast electronically.

Taiwan

The Company Law was amended and promulgated on June 22, 2005 and came into effect on June 24 of the same year. In response to the technological progress in electronic communication, Company Law was revised to incorporate communication voting in order to facilitate proxy process and encourage participation from shareholders to vote proposals. This revision also allows companies to accept proxies either in printed format or electronically from the shareholders. Shareholders vote electronically are deemed no distinction to those who attend the meeting in person.

CONCLUSION

Electronic voting (e-voting) is a process that allows casting of votes through different electronic mechanisms. It includes both casting of votes as well as the counting of the same through electronic methods. The e-voting technology and platform may include punch cards, optical scan voting systems and specialised voting kiosks, telephone, SMS, etc.

However, all the advantages are futile if they can be abused and the election results can be manipulated. E-Voting in India must be accompanied by proper plan and adequate information and communication technology infrastructure. At the same time special emphasis must be given to the cyber security aspect of e-voting mechanism in India.

While the use of e-voting may help expanding the voting community yet there must be a suitable policy and regulation to prevent and remedy misuses arising out of such voting system. Every new system brings its own peculiar problems and the proposed e-voting system would also face the same. Only time would tell how effective this system would be?

The system is by no means perfect and as long as we continue to hear stories of votes being lost due to clerical errors, improvements are necessary. It is incumbent on all participants to take the necessary remedial action.

References: