Company Law Corner

ALL ABOUT E-VOTING

Introduction

With the dawn of electronic age, where the distances around the world have been compressed by the use of internet, the Companies Act, 2013 has acknowledged the need to bring the advantage of technology to voting system of companies in order to enable the shareholders to be active in the decision making of the company. Through e-voting, a shareholder can vote on the resolutions of a meeting without even being present at the general meeting, from a remote location.

"Voting by electronic means" includes "remote e-voting" and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting.

Advantages of E-voting

- Maximize user participation- It provides an opportunity to shareholders residing in far-flung area to take part in the decision-making process of the company. They may or may not attend the meeting physically.
- Cost-effective- Substantial reduction in administration costs for, postal correspondence, verification of signatures or storing of physical ballot papers
- It also reduces the chances of the errors.
- Votes are not delayed or lost in Transit
- Increased Efficiency and Transparency
- Reduces Paperwork
- Good Corporate Governance- E-Voting is a further step to encourage corporate democracy and to promote good corporate governance.

Legal Framework of E-Voting

Section 108 of Companies Act 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014 prescribes the manner of e-voting, its applicability to companies etc.

Power of Central Government to prescribe the class of companies and the manner of voting. (Section 108)

Section 108 of the Companies Act 2013 empowers Central Government to prescribe the class or classes of companies and the manner in which a member may exercise his right to vote by the electronic means.

Class of Companies Prescribed [(Rule 20(2) of the Companies (Management and Administration) Rules, 2014]

Rule 20 (2) states that every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

Exceptions:

However, a Nidhi, or an enterprise or institutional investor referred to in Chapter XB (i.e. having equity listed on SME Stock Exchanges) or Chapter XC (i.e. having equity listed on Institutional Trading Platform) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 are not required to provide the facility to vote by electronic means.

Voluntary option for E voting

If a company voluntarily opts to give its shareholders the e-voting facility, in such case, it requires to comply with the entire provisions of Rule 20 of the Companies (Management and Administration) Rules, 2014.

The provisions seek to ensure wider shareholders participation in the decision-making process in companies. This initiative taken by the MCA has been a positive booster towards enduring good corporate governance in India.

Show of hands and demand for Poll not to be allowed

Voting by show of hands and Demand for Poll are not allowed, in case of Companies providing E-voting facility as per Rule 20 of the Companies (Management & Administration) Rules, 2014.

Postal Ballot and e-voting

In view of Section 110(1)(a) read with Rule 22(16) of the Companies (Management and Administration) Rules, 2014 which specifies certain businesses to be transacted only by means of postal ballot may be transacted at a general meeting by a company in case such company is required to provide the facility to members to vote by electronic means under section 108 of the Companies Act, 2013, in the manner provided in that section.

Prior requirements of E-Voting

1) Appointment of Agency

As per SS-2, "Agency" means agency approved or recognised by the Ministry of Corporate Affairs and appointed by the Board for providing and supervising electronic platform for voting.

Ministry of Corporate Affairs has authorised National Securities Depository Limited (NSDL) or the Central Depository Services (India) Limited (CDSL) or any other approved agency for setting up an electronic platform to facilitate members/shareholders to cast vote in electronic form.

2) Decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights

The cut-off date for determining the Members who are entitled to vote through Remote e-voting or voting at the Meeting shall be a date not earlier than seven days prior to the date fixed for the General Meeting.

Only Members as on the cut-off date, who have not exercised their Voting Rights through Remote e-voting, shall be entitled to vote at the Meeting.

3) Appointment of Scrutinizer

The Board of Directors shall appoint one or more scrutiniser, after taking his prior consent, who may be a Company Secretary in practice or a Chartered Accountant in practice or a Cost Accountant in practice or an Advocate or any other person who is not in employment of the company and is a person of repute and who, in the opinion of the Board can scrutinise the voting process and remote e-voting process in a fair and transparent manner.

Such scrutiniser shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

Scrutiniser so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system. Such scrutinizer shall help the Chairman in conducting the voting using ballot or electronic voting.

4) Notice of the Meeting

Notice of the Meeting, wherein the facility of e-voting is provided, shall be sent to all the members, directors and auditors of the company either by registered post or speed post or by sending the same through electronic means, namely registered e-mail Id of the recipient or by courier service.

The Notice shall also be placed on the website of the company, if any and of the agency (which shall be NSDL or CDSL or other approved agency.)

Such notice shall clearly state that:

a) the company is providing facility for voting by electronic means and the business may be transacted through such voting;

b) the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;

c) the members who have cast their vote by remote-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

d) Further it shall also indicate the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast by remote-e voting and shall also provide the login ID and specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

5) Advertisement

Immediately after completion of the dispatch of notice of the meeting as mentioned above but at least twenty-one days before the date of general meeting, a public notice by way of an Advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in an English language in an English newspaper having country-wide circulation.

The following matters shall be specified in the Advertisement:-

a) statement that the business may be transacted through voting by electronic means;

b) the date and time of commencement of remote e-voting;

c) the date and time of end of remote e-voting;

d) cut-off date;

e) the manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;

f) The statement that –

- ✓ remote e-voting shall not be allowed beyond the said date and time;
- ✓ the manner in which the company shall provide for voting by members present at the meeting;
- ✓ a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
- ✓ a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and

h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means.

Such public notice shall be placed on the website of the company, if any, and of the agency;

6) Facility for remote e-voting

The facility for remote e-voting shall remain open for not less than 3 days, once the same is opened and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cut-off date, may opt for remote e-voting.

Once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again.

A member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again.

At the end of the remote e-voting period, the facility shall forthwith be blocked, however, a company may opt to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

However, the facility of remote e-voting does not dispense with the requirement of holding a General Meeting by the company. It is mandatory to have a physical General Meeting in view of the fact that e-voting is only a facility and it is not mandatory for the Members to use the same. Members may still prefer to attend the Meeting and exercise their voting rights at such Meeting.

Procedure of E-Voting

- For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiniser shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their vote.
- At the end of discussion on the resolutions on which voting is to be held, the Chairman with the assistance of Scrutinizer, using polling papers or electronic voting system allow voting to all those members who are present at the General Meeting but have not cast their votes by remote e-voting facility.
- Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.
- Until the votes are cast at the meeting, the manner of voting (in favour or against), shall not be available to the Chairman, scrutiniser or any other person till the votes are cast in the Meeting or voting at the Meeting ends.
- The scrutiniser shall immediately after the conclusion of voting at the general meeting, will first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company.
- The scrutiniser shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.
- The scrutiniser(s) shall submit a consolidated report within three days of conclusion of the meeting, to the Chairman or a person authorised by him and such report shall be countersigned either by the Chairman or person authorised by him.
- The result of the voting shall be declared forthwith. The resolution if it gets required number of votes, will be deemed to be passed on the date of the relevant general meeting.

- The Result of e-voting along with Scrutinizer Report shall be placed on the website of the Company (if any) and on the website of agency immediately after the result is declared.
- Companies whose equity shares are listed on a recognised stock exchange, shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.
- The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.
- The scrutinisers' register, report and other related papers received from the scrutiniser(s) shall be kept in the custody of the Company Secretary or any other person authorized by the Board for this purpose.
- For the resolutions passed by e-voting, a brief report on e-voting conducted including the resolution proposed, result of voting and the summary of the scrutiniser's report shall be recorded in the minutes book and signed by the Chairman (or in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose) within 30-days from the date passing of resolution by e-voting.
- A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

E voting time-line chart

Day	Event/document/process
0	• Draw the list of shareholders for dispatch of notice
	• Appointment of scrutinizer with his consent who shall be available for ascertaining the requisite majority
	• Appointment of agency to provide e-voting facility
	• Intimation to stock exchange (Applicable to equity listed companies)
1 Day	• Dispatch the notice of general meeting to all the members, directors and auditors:
	➢ by registered post, or
	➢ by Speed Post, or
	➢ by courier, or
	➢ Through electronic means to registered e-mail ID

	• Publish by way of an advertisement, immediately on completion of dispatch of notices for the general meeting but at least 21 days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, specifying the stipulated matters.
	• Display of copy of general meeting notice together with resolution and public notice at website of the Company, if any and agency
	• Intimation to stock exchanges (Applicable to equity listed companies)
Any day before 18th Day	• Cut-off date (Not more than 7 days before the date of general meeting)
	• Draw the list of eligible shareholders and provide same to agency to load the data at e-voting website.
21st Day	• Commencement of remote E-voting
24th day	• Conclusion of the remote E-voting at 5 P.M. Blocking of e-voting facility
25th day	• Date of the General Meeting-conduct the meeting discussion on business as scheduled
	• Get the list of shareholders who have cast their votes through remote e-voting
	• Allow the shareholders, who have not opted for remote e-voting, to vote through electronic voting system or ballot or polling paper at the general meeting
	• Immediately after conclusion of meeting, scrutinizer to count the votes cast at meeting and unblock the votes cast at remote e-voting in the presence of two witnesses (who are not in employment of the company) and prepare a consolidated report of e-voting.
	• Scrutinizer to maintain the register to record the e-voting
	• Effective date of resolutions passed shall be relevant general meeting.

28th day	• Submission of scrutinizer report to Chairman or a person authorized by chairman. The report is required to be counter signed by the chairman or a person authorized by chairman
	• Declaration of results by the Chairman or a person authorized by chairman
	• Place the results declared together with scrutinizer report on the website of the company, if any, and on the website of the agency
	• Prepare the minutes of the general meeting
	• Chairman of the meeting to consider, approve and sign the minutes
	• Handing over the register and all other polling papers by the scrutiniser

Conclusion

The process of e-voting has given due recognition to the corporate democracy, as it has widened the participation of maximum shareholders in the voting process. Inception of e-voting, has provided an opportunity to the shareholders residing in far-flung areas to participate in the decision-making process of the company. They may or may not attend the meeting in person. Boards in their fiduciary capacity are now looked upon for higher accountability and transparency for the effectiveness of their overall governance process. In this direction, as stated above e-voting have engendered corporate democracy.

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