**ICSI Events**

1. **Launch of Call Centre by ICSI**

2. **42nd National Convention of Company Secretaries, 21-23 August, 2014, Science City, Dhapa, Kolkata**

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Chief Guest P.K. Malhotra (Secretary, Ministry of Law and Justice) addressing.
Others sitting on the dais from Left: M. S. Sahoo (Secretary, ICSI) Atul Mehta (Council Member, ICSI) R. Sridharan (President, ICSI) Vikas Y Khare (Vice-President, ICSI)
Anil Murarka (Council Member, ICSI) and Ragini Chokshi (Chairman, WIRC of ICSI)

Chief Guest G. Padmanabhan (Executive Director, Reserve Bank of India) addressing.
Others sitting on the dais from Left: Sutanu Sinha (Chief Executive, ICSI), Anil Murarka (Council Member, ICSI), R. Sridharan (President, ICSI), Vikas Y Khare (Vice-President, ICSI), Atul Mehta (Council Member, ICSI), Ragini Chokshi (Chairman, WIRC of ICSI) and M. S. Sahoo (Secretary, ICSI)
Addressing the Audience: Shri P. K. Laheri, IAS (Retd.), Former Chief Secretary, Government of Gujarat, Sitting from Left (clockwise): Shri Rajesh Tarpara (Chairman, Ahmedabad Chapter of ICSI), Shri Umesh H. Ved (Programme Director & Council Member, ICSI), Dr. C. K. G. Nair (Adviser, Ministry of Finance) and Shri Rutul Shukla (Secretary, Ahmedabad Chapter of ICSI) at National Programme on June 21, 2014 at Ahmedabad during ICSI Capital Markets Week.

Chief Guest R K Dubey (CMD, Canara Bank) seen lighting the lamp. Others standing from Left: Ullas Kumar Melinamogaru (Chairman, Mangalore Chapter of ICSI), (Dr.) Baiju Ramachandran (Chairman, SIRC of the ICSI), Sudhir Babu C (Programme Director & Council Member, ICSI), R. Sridharan (President, ICSI), M.S. Sahoo (Secretary, ICSI) and Sutanu Sinha (Chief Executive, ICSI) at National Programme on June 25, 2014 at Mangalore during ICSI Capital Markets Week.

Launch of ICSI Call Centre (Standing from Left to Right): Sutanu Sinha (Chief Executive, ICSI), Atul H. Mehta (Council Member, ICSI), P K Mittal (Council Member, ICSI) R. Sridharan (President, ICSI), Vikas Y Khare (Vice - President, ICSI), Gopalakrishna Hegde (Council Member, ICSI), Sudhir Babu C (Council Member, ICSI) and M S Sahoo (Secretary, ICSI)
Message from President

Dear Member,

This is the third edition of CS Nitor within short period of four weeks, which amply shows that the rapid changes on policy issues concerning the profession and related legislative and regulatory frameworks are required to be disseminated amongst the members swiftly, methodically and succinctly.

Over the years the concept of professional responsibility has undergone tremendous change both in its content and form. Contemporary discourses on professional responsibility view that the same to be aligned with evolving legislative background, governance issues, increased stakeholders activism, environmental concern, ethical issues, prescribed professional standards both within the country and at international level. Apart from these environmental factors, cognitive factors of a professional such as attitude, approach, thinking, intuition, mind set, and mood are also equally vital, while discharging professional responsibility.

Robust growth of a profession rests on the standards assiduously maintained by its members. As far as our profession is concerned that these standards were studied and codified and the relevant secretarial standards are being released by the Institute form time to time, over the years, which culminated that the SS-1 and SS-2 have become mandatory under the Companies Act, 2013. Since these standards emanate from the interrelated process, systems and procedures and in order to sensitize members in this direction, the Institute has introduced Peer Review Programme across the country and it has also recently started Induction Programme for the members both in employment and in practice.

Under the Companies Act, 2013, our members are expected to play decisive role in governance architecture and meet the challenges and expectations of regulators and other stakeholders. It is necessary for the professionals to maintain equipoise attitude in discharging professional responsibility, no matter, whether it is big or small. I conclude this communication with a riveting observation of J W Gardner, President of the Carnegie Corporation, about the attitude towards work, is worthy to note—“The society which scorns excellence in plumbing as a humble activity and tolerates shoddiness in philosophy, because it is an exalted activity will have neither good plumbing nor good philosophy…neither its pipes nor its theories will hold water”

Regards

R Sridharan
President
president@icsi.edu
The Council

President
R. Sridharan

Vice-President
Vikas Y. Khare

Members
(in alphabetical order)
Amardeep Singh Bhatia
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Ardhendu Sen
Arun Balakrishnan
Ashok Kumar Pareek
Atul Hasmukhrai Mehta
Atul Mittal
B. Narasimhan
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Sanjay Grover
Sudhir Babu C.
U. D. Choubey (Dr.)
Umesh Harjivandas Ved

Secretary
M. S. Sahoo

Chief Executive
Sutanu Sinha
FAQs on Electronic Voting-The Companies Act, 2013

CS Mamta Binani, Past Chairperson, EIRC of ICSI
Practising Company Secretary

The Companies Act, 2013 (hereinafter referred to as the Act) has introduced the concept of voting through electronic means and in accordance with Section 108 of the Act read with Rule 20 of the Companies (Management and Administration) Rules, 2014 (hereinafter referred to as the CMA Rules), prescribe the manner in which a member may exercise his right to vote by the electronic means by listed and other specified class of companies. The said provisions were made applicable from 1st April, 2014.

Subsequently, vide General Circular No. 20/2014 dated 17th June, 2014, MCA has issued clarifications with regard to voting through electronic means. In terms of the said circular, the provisions relating to e-voting in the Act will not be treated as mandatory till 31st December, 2014.

Earlier, for companies whose equity was listed, SEBI vide its Circular No. CIR/CFD/DIL/6/2012 dated 13th July, 2012 amended the equity listing agreement when it inserted Clause 35B for such companies to provide e-voting facility to its shareholders, in respect of those businesses, which were transacted through postal ballot. Subsequently, SEBI vide its Circular No. CIR/CFD/POLICY CELL/2/2014 dated 17th April, 2014 revised Clause 35B stating that it would be applicable to all listed companies and the modalities would be governed by the provisions of Companies (Management and Administration) Rules, 2014. SEBI Circular No. CIR/CFD/DIL/6/2012 dated July 13, 2012 now stands amended to that extent.

It may be noted that, although MCA has decided not to treat the e-voting provisions of the Act as mandatory till 31st December, 2014, the listing agreement vide clause 35B still treats the e-voting requirements for listed companies as mandatory as there is no amendment announced by SEBI in that regard. Hence the same continues to be applicable. The Paper has captured some of the FAQs on the subject as under:

**How is Voting through electronic means defined under the Act?**

Voting through electronic means is not defined in the Act. However, explanation to Rule 20(2) of the CMA Rules define the expressions “voting by electronic means” or “electronic voting system” to mean a ‘secured system’ based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate ‘cyber security’.

The expressions ‘secured system’ and ‘cyber security’ has also been defined in the CMA Rules.

**Does “voting through electronic means” fall within the definition of Postal Ballot?**

Yes. In terms of Section 2(65) of the Act, postal ballot means voting by post or through any electronic mode.

**Which prescribed class of companies is required to provide e-voting facility to its members?**

1. Any company which has any of its securities listed on any recognized stock exchange or
2. Any company having not less than 1000 shareholders

This clearly means that apart from listed companies (mark the words ‘securities’), public limited unlisted companies having not less than 1000 shareholders will also attract e-voting provisions.
It may be noted that in case of private limited company, the maximum number of shareholders, excluding its former or existing employees who are also holding shares of the company, is 200. So if the number of shareholders including its employees touches or exceeds 1000, the provision of providing e-voting facility will be then applicable to a private company also.

Is e-voting applicable for general meetings held in the months starting from April 2014 to December 2014?

Yes, for listed companies (SEBI mandate will prevail).

However, for unlisted companies, MCA General Circular No. 20/2014 dated 17th June, 2014 has clarified that the provisions relating to e-voting in the Act will not be treated as mandatory till 31st December, 2014.

Is it mandatory for every shareholder to opt for the e-voting facility?

No. The shareholder concerned has an option of e-voting which he may or may not exercise. [Rule 20(2) of the CMA Rules provides that “a member may exercise his right to vote at any general meeting by electronic means...”]

Is it mandatory to provide e-voting facility by prescribed class of companies for all resolutions to be passed at general meetings?

Yes. Effective 1.4.2014, the facility has to be provided for all types of businesses and resolutions to be passed at General Meetings. However, for unlisted companies, MCA General Circular No 20/2014 dated 17th June, 2014 has clarified that the provisions relating to e-voting in the Act will not be treated as mandatory till 31st December, 2014.

However, the aforesaid revised Clause 35B of the equity listing agreement issued by SEBI expressly requires that the issuer shall provide e-voting facility to its shareholders in respect of all shareholders’ resolutions, to be passed at General Meetings or through postal ballot.

Therefore, whenever any listed company decides to pass

a] resolution at general meeting or  
b] by way of a postal ballot, it shall also provide e-voting facility to all its members.

In terms of the relevant Rule 20, e-voting is required to be mandatorily provided for all resolutions to be passed at the general meeting of a prescribed class of company. Postal Ballot transactions, in our opinion are not transacted at general meetings.

Hence for unlisted companies, in case of resolutions to be passed by postal ballot, e-voting is not mandatory.

Clarification (iii) in Annexure to MCA aforesaid Circular 20/2014 also seems to establish this view.

Are the provisions relating to demand for poll relevant for companies to which provisions of e-voting is applicable?

No. In terms of clarification (iv) in Annexure to MCA Circular No. 20/2014 dated 17th June, 2014, the provisions of section 107 make it clear that in case of companies which are covered under section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, the provisions relating to demand for poll will not be relevant.

In what manner can the shareholders who have not opted for e-voting facility, vote at the general meeting?

The shareholders who have not opted for e-voting facility are entitled to vote at the general meeting. However, they are not required to demand a poll. In other words, the Chairman of the meeting shall regulate the meeting to
allow such shareholders to vote on the basis of proportion of his share in the paid up capital of the Company, i.e. one share—one vote.

In terms of section 107 of the Act, voting by show of hands is not allowable where electronic voting is applicable.

Is e-voting facility an additional tool to empower shareholders to vote without attending general meeting?

Yes. E-Voting is an additional tool available in the hands of all the shareholders of the prescribed class of companies besides the other ways in which one can vote. In other words, right to attend the general meetings and voting by poll also continues to be available with all the shareholders besides e-voting option. It is up to the shareholder concerned as to which right he wants to exercise.

It is reiterated that if a shareholder exercises his right to vote using electronic means he cannot once again vote by way of poll. Similarly, in cases where a company provides both the options i.e. e-voting & postal ballot, a shareholder is not expected to send his assent or dissent also in writing after e-voting on a resolution which is conducted/passed by way of a postal ballot.

For a resolution requiring to be passed by way of postal ballot, if a shareholder votes through e-voting and also posts his assent or dissent in writing, which of the 2 will be taken into account?

The shareholder is not expected to exercise his vote twice for the same resolution. In case of any such circumstances, the ballot sent by him, if any in writing should be ignored and the e-voting assent/dissent should be considered.

A shareholder who has exercised e-voting attends the General meeting of the Company. Will the shareholder be allowed inside the meeting?

Clarification (ii) in Annexure to MCA Circular No. 20/2014 dated 17th June, 2014 has clarified that a person who has voted through e-voting mechanism in accordance with Rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.

Rule 20(3)(ii) of the CMA Rules talks about an agency. What is the role of that agency?

For providing the e-voting facility, a company needs to utilize the service of any one of the agencies providing e-voting platform, which is in compliance with conditions specified by the Ministry of Corporate Affairs, Government of India, from time to time.

At this point in time, CDSL, NSDL and Karvy are such agencies.

Is there any procedure prescribed for e-voting?

Yes. Rule 20 of the CMA Rules prescribes the procedure for voting through electronic means. It inter-alia, prescribes the procedure for sending such notices, contents of such notices, advertisement requirements, opening and closing period of e-voting, appointment of scrutinizer, the duties of scrutinizer and the declaration of results.

How will the shareholder become aware of the process of e-voting?

Rule 20(3)(iv) requires the notice of the meeting to clearly indicate the process and manner and other prescribed details for voting by electronic means.

In terms of the amended Clause 35B of the equity listing agreement, the company concerned is also required to send a internet link of the e-voting facility in the notice calling general meeting.
A shareholder has 2000 shares on the date of exercising his votes by the e-voting mode. On the record date fixed by the Company, he had 1500 shares. Will he cast votes as per the 1500 count or will it be as per the 2000 count?

The count will be reckoned as on the record date. In this example, it will be 1500.

A shareholder is holding all shares in physical mode. Can he still avail e-voting?

Yes, he can avail e-voting irrespective of his mode of holding.

A shareholder has 2500 shares in 2 folios. In one folio he holds 1000 shares in physical mode and in the other folio, he holds 1500 shares in dematerialization mode. Can he avail physical voting/ e-voting for 1000 shares and e-voting/ physical voting for the other 1500 shares?

Yes.

A shareholder has 2500 shares in 1 folio. Can he arbitrarily use physical mode of voting for some shares and e-voting for the remaining?

No.

Will the persons opting for e-voting be considered for the purpose of quorum of general meeting?

The provisions of the Act and CMA Rules are silent on this issue. Section 103 of the Act determines the quorum by way of personal presence of the members. Given this situation, the persons opting for e-voting who are not personally present at the meeting will not be considered for the purpose of quorum. If the intent of the legislation is to include the shareholders who have opted for e-voting, and are not physically present in the meeting, for the purposes of quorum, then MCA needs to further clarify in this matter.

Is the e-voting required to be completed before the general meeting?

Yes. The e-voting needs to be mandatorily completed 3 days prior to the date of the general meeting.

For how many days is the e-voting required to be kept open for the members?

The e-voting shall have to be kept open for 1 day at the minimum and 3 days at the maximum.

Are the e-voting results required to be shared with the members at the general meeting?

The Act and the Rules do not specifically mandate the same. The e-voting period is required to be completed 3 days prior to the date of general meeting, whereas the scrutinizer’s report on e-voting is required to be unblocked and delivered forthwith to the Chairman, within a period of not exceeding 3 working days from the date of conclusion of the e-voting period. The words that could have lent a little more clarity would have been ‘not exceeding 3 working days but on or before the general meeting’.

Thus, the Act and the Rules do not specify for submission of the aforesaid report before the general meeting but for all practical purpose, if the sense of the resolution is to be arrived at, the Chairman has to take into account, both, i.e. the numbers at the general meeting and the numbers who have already e-voted, without which the results of voting on a resolution cannot be declared at the meeting. Probably, this is also one of the reason, why the e-voting process is mandated to be completed earlier to the date of general meeting.

If e-voting has to be completed 3 days prior to the date of general meeting, what will be the date of passing of any resolution by e-voting?

The date of passing of the resolution shall be deemed to be the date of the relevant general meeting.
ELECTRONIC VOTING

Alka Kapoor, Joint Secretary, ICSI

Meetings are perhaps the best practical expression of democratic form of corporate function. For the real owners of the organization i.e. the shareholders it is an opportunity for constructive dialogue between the management and shareholders. By the virtue of being shareholders they have a say in the decision making of the company which they exercise by casting their valuable votes. Voting by electronic means is a facility given to the members of a company to cast their votes on the resolutions through electronic mode. They may or may not attend the meeting physically.

Boards in their fiduciary capacity are now looked upon for greater accountability and transparency for the effectiveness of their overall governance process. It is significant that the shareholders meetings are planned and organized properly and are conducted in a constructive, meaningful and transparent manner. Exercising of the voting rights by the shareholders is an invariable tool to hold the board accountable for its activities.

In times of technological advancement, various novel modes of communication such as internet, video-conferencing, webcast etc, electronic voting, the boundaries have become baseless, as a result shareholders situated in different geographical areas can communicate and cast their vote in meetings using new techniques of communication.

Genesis

E-voting process has been introduced in order to secure wider participation of shareholders in the important decisions of the company.

The Second Naresh Chandra Committee Report recommended introduction of passing of written resolutions in lieu of general meetings. The Committee opined that holding general meetings to pass such resolutions is cumbersome and involves unnecessary expenditure. Adopting a procedure for 'written resolutions' will be expedient and simpler. The committee recommended that "Written resolutions can be passed through various forms of electronic communication, provided there is compliance with the Information Technology Act, 2000 and other applicable laws."

Further, Expert Committee on the new Company Law chaired by Dr. J.J. Irani in the year 2004 recommended that Law should provide for an enabling clause for voting through electronic mode.

Companies Act, 2013

Section 108 of Companies Act, 2013 read with rule 20 of Companies (Management and Administration) Rules, 2014 provides that every listed company or a company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.

However, vide General Circular 20/2014 dated 17th June, 2014 the MCA, while considering some practical difficulties in respect of voting through electronic means and conduct of general meetings, decided not to treat
the relevant provisions of Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 mandatory till 31st December, 2014. This implies that companies may not conduct voting through electronic means till 31st December, 2014. But Securities and Exchange Board of India [SEBI] has vide circular no. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014) made e-voting mandatory for all listed entities and provided that the modalities would be governed by the provisions of Companies (Management and Administration) Rules, 2014.

Rule 20 defines “voting by electronic means” or “electronic voting system” so as to mean a ‘secured system’ based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate ‘cyber security’.

“secured system” under the rules, means computer hardware, software, and procedure that –

(a) are reasonably secure from unauthorized access and misuse;
(b) provide a reasonable level of reliability and correct operation;
(c) are reasonably suited to performing the intended functions; and
(d) adhere to generally accepted security procedures.

“Cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

The procedural aspects of the e-voting process are covered under the Rules. Although it is mandatory for prescribed companies to provide for e-voting facility to its shareholders, any other company may opt to provide the facility to its members to exercise their votes at any general meeting by electronic voting system. However, such a company shall also have to comply with the Rule 20 of Companies (Management and Administration) Rules, 2014.

Notice of such meeting

The notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means. 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 and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner.

The e-voting Period and voting

The e-voting shall remain open for not less than one day and not more than three days. It has been clearly provided that in all cases, voting period shall be completed three days prior to the date of the general meeting.
the shareholders of the company during this period, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically.

At the end of the voting period, the portal where votes are cast shall forthwith be blocked.

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

**Advertisement**

The company shall publish an advertisement about having sent the notice of the 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 a wide circulation in that district. The advertisement shall be published not less than five days before the date of beginning of the voting period.

The advertisement shall specify therein, inter alia, the following matters, namely:-

- a) statement that the business may be transacted by electronic voting;
- b) the date of completion of sending of notices;
- c) the date and time of commencement of voting through electronic means;
- d) the date and time of end of voting through electronic means;
- e) the statement that voting shall not be allowed beyond the said date and time;
- f) website address of the company and agency, if any, where notice of the meeting is displayed; and
- g) contact details of the person responsible to address the grievances connected with the electronic voting.

**Appointment and role of the scrutinizer**

The Board of directors shall appoint one scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner.

The scrutinizer 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.

The scrutinizer within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the company and make a scrutinizer’s report of the votes cast in favour or against, if any. Such report shall be sent to the Chairman.
The scrutinizer is required to 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 shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the register and other related papers to the company.

The results declared along with the scrutinizer’s report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.

The resolution shall be deemed to be passed on the date of the relevant general meeting of members.

**Godrej Case**

Recently Bombay High Court in scheme of amalgamation between Wadala Commodities Limited with Godrej Industries Limited has passed a judgment on postal ballot, e-voting and relevance of General Meetings which has raised genuine issues of legislative requirement of the E-voting concept. The Bombay High Court deliberated exhaustively on various law provisions, rules and SEBI circular dated 21st May, 2013 inter-alia relating to e-voting, postal ballot, etc. This Gist of the judgement dated May 8, 2014 is as below:

(i) Whether the provision of postal ballot, which includes voting by electronic means implies complete substitution of an actual meeting. That is, does the 2013 Act has the effect of all together eliminating the need for an actual meeting being convened.

In terms of new law, shareholders may express their views only by voting through postal ballot or electronic voting – this is altogether extreme to a proposition especially if it is sought to be applied to all meetings other than those limited one’s where the statute requires a meeting to be held.

(ii) As per section 110 (1) (b) for any item of business in respect of which directors or auditors a have a right to be heard, a company may transact that item of business by means of postal ballot in such manner as may be prescribed instead of transacting it at the General meeting. Sub-section 2 of Section 110 contains a deeming fiction which says that if a resolution is assented to by the requisite majority of shareholders it shall be deemed to have been duly passed at a general meeting convened for this purpose. (This is an area which was highlighted by the Applicant).

(iii) An important right of shareholder democracy is not only to vote on any particular item of business so much as is the right to use the vote as an expression of an informed decision. Shareholder has an inalienable right to ask questions, seek clarifications and receive responses before he decided which way he will vote.

For greater inclusiveness, this right cannot be altogether done away with. To ask a shareholder to cast his vote only on the basis of information that has been sent to him by post or mail, seems to be
completely contrary to the legislative intent and spirit to the expressed terms of the SEBI circular and amended Listing Agreement Clause 35B and 49. This matter needs fuller consideration, till the matter is fully heard and decided no authority or company should insist upon such a postal - Ballot- only meeting to the exclusion of actual meeting.

(iv) Often, scheme of arrangement or comprise are amended at a meeting however, in case of a postal ballot no such amendment is possible.

(v) Section 110 speaks of meetings called by the company. There are court convened meetings. A court may even dispense with such a meeting, irrespective of any provisions for a postal ballot.

(vi) Section 110 plainly speaks of transaction of certain item of business by postal ballot instead of transacting such business at a general meeting.

(vii) There must be reasonable opportunity to participate at the meeting, participation connotes something more than merely meeting.

Various issues and operational difficulties relating to Electronic voting

1. Voting by Show of Hands: According to section 107, at any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

   For all the transactions put to vote by electronic means by such companies, implies that the provisions of section 107 become ineffective. The same has been clarified by the MCA vide General Circular 20/2014 dated 17th June, 2014 wherein it is stated that voting by show of hands under section 107 would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.

2. Demand for Poll: Similarly, The Ministry of Corporate Affairs in the same Circular clarified that companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, the provisions relating to demand for poll would not be relevant.

3. Right to participate personally: A member of the company who has voted through electronic means may attend the general meeting and participate in the deliberations.

   It has been clarified by MCA vide same Circular 20/2014 that a person who has voted through e-voting mechanism in accordance with rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final. The Ministry has further clarified that since voting through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting and voting physically accordingly.
4. *Proxy*: Proxy is a facility given to the members to exercise his voting rights in case the member is unable to attend and vote himself. The provision for electronic voting is a platform facilitating the members to vote on their own. Hence if a member himself votes electronically, the concept of appointment and voting by proxy becomes irrelevant.

**International Provisions**

US state of Delaware (which state that ballots, proxies and actions taken by consent may all be permissible through electronic transmission), many of the States in the United States have amended their laws to permit electronic voting. Delaware has introduced the most comprehensive reforms, going so far as to approve the exclusive use of virtual shareholder meetings by means of "remote communication". All that is required for electronic participation in a meeting is that the company be able to verify shareholder identity and voting results. Shareholders who are not physically present may participate in a meeting by remote communication and be deemed "present" in person to be counted for quorum and other voting purposes. Where the meeting is conducted wholly online the company must implement reasonable measures designed to allow shareholders to participate in the meeting and vote, including an opportunity to read or hear the proceedings "substantially concurrently" with the proceedings. Canada company law allows shareholders to vote electronically while participating in a meeting by electronic means.

U.K Companies Act 2006 provides the holding and conducting of a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it.

Further countries like Australia, Germany have a provision for electronic voting in the respective companies legislation.

**Conclusion**

As Electronic voting is a novel provision in India, the practical issues are bound to arise. But, with experience and technology, these issues are likely to settle down in the times to come. And on major issues MCA has given the desired clarifications. An important door to further enhancement of shareholder democracy has opened up.
E-Voting: A New Dimension in Corporate Voting Process

Akinchan Buddhodev Sinha
Assistant Director, Directorate of Perspective Planning, ICSI

Introduction

A new dimension is being added in the voting mechanism of listed companies with e-voting becoming a mandatory component. The ushering in of e-voting concept under new company law is made with an objective of ensuring wider participation of shareholders in the decision making process of companies. It was not so that this aspect was missing previously, as evident from the notification of the Ministry of Corporate Affairs, Companies (Passing of Resolution by Postal Ballot) Rules, 2001. However, on account of surge in the number of security holders, this option received a limited response. So a need was felt to introduce convenient mode for exercising the voting rights in order to broaden the participation of shareholders in voting process.

Voting by electronic medium implies a process for recording votes by members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the complete voting gets registered and counted in a electronic registry in a centralized server.

Electronic voting technology can cover punched cards, optical scan voting systems and specialized voting kiosks (including self-contained direct-recording electronic voting systems, or DRE). It can also involve transmission of ballots and votes via telephones, private computer networks, or the internet.

Moving Ahead

Ministry of corporate affairs had issued circulars lto encourage ‘Green Initiatives’ in the corporate governance and e-voting was one of the initiatives in those circulars to attain the Green Initiative. Securities and Exchange Board of India (SEBI) made it compulsory for top 500 business organizations listed at BSE and NSE, selected on the basis of their market capitalization, to provide e-voting facility to its shareholders in respect of those businesses which are transacted through postal ballot and for which notices got issued on or after 1st October, 2012.

Now the companies Act, 2013 has introduced new provision, voting through electronic means under Section 108 read with Companies (Management and Administration) Rules, 2014. Despite being applauded by corporate and other stakeholders, the new approach have drawn attention to some practical issues with reference to general meetings to be held in the next few months. To provide clarity and ensure uniformity in the e-voting process, clarifications on certain important matters raised by the stakeholders have been covered by the annexure of the Circular (General Circular No. 20/2014) of Ministry of Corporate Affairs. The clarifications provided are as follows:

(a) **Show of hands not to be permitted in case of e-voting:** With reference to clear provisions of section 107, voting by show of hands would not be allowed in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.
(b) **Participation in the general meeting after voting by e-means:** It is clarified that a person who has voted through e-voting process according to rule 20 shall not be disqualified from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (exercised through e-means) shall be considered as final.

(c) **Applicability of rule 20 for matters specified under rule 22(16):** With reference to the shareholders query regarding matters specified under rule 22(16) (transactions of certain items only through postal ballot) can be considered in a general meeting where e-voting facility is available. After examining this issue it has been stated that in view of clear provisions of section 110(1)(a) read with such rule 22(16), it would be necessary to transact items specified in rule 22(16) only through postal ballot and not at the general meeting.

(d) **Relevance of provisions relating to demand for poll:** In case of companies having share capital, voting through e-means takes into consideration ‘Proportion principle’ [i.e. one share – one vote] unlike ‘one person – one vote’ principle under ‘show of hands’. This along with provisions of section 107 make it clear that in case of companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, the provisions pertaining to demand for poll would not be relevant.

(e) **Permissibility of voting by postal ballot under rule 20:** Stakeholders have asked for clarification regarding cases (covered under rule 20) where a shareholder who is unable to participate in the general meeting personally and who is also not exercising voting through e-means, whether such a person shall have the alternative to vote through postal ballot. After examining the matter it was felt that taking into account the provisions of the Act such an alternative would not be available.

(f) **Manner of voting in case of shareholders present in the meeting:** Regarding the manner of voting for shareholders (of a company covered under Rule 20) who are present in the general meeting, clarifications were sought by the shareholders in this regard. The clarification provided was that since voting through e-means would be on the basis of proportion of share in the paid-up capital or ‘one-share and one-vote’, the Chairperson of the meeting shall regulate the meeting accordingly.

(g) **Applying rule 20 voluntarily:** Regarding reference by the shareholders to words ‘A company which opts to’ appearing in rule 20(3) and raising of the query with reference to the applicability of rule 20 for the companies not covered under rule 20(1). Now regarding voluntary application of rule 20, it is clarified that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a scenario, the whole of procedure specified in rule 20 shall be applicable to such a company. This is important so that any piece-meal application does not prejudice the interest of shareholders.

**What Companies Needs to Do?**

(i) The notices of the meeting shall be sent to all the members, auditors of the company, or directors either-
(a) by registered post or speed post; or

(b) through electronic means like registered email id;

(c) through courier service;

(ii) the notice shall also be hosted on the website of the company, if any and of the agency forthwith after it is send to the members;

(iii) the notice of the meeting shall clearly state that the business may be transacted through electronic voting system and the company is offering facility for voting by electronic means;

(iv) the notice shall clearly mention the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner.

(v) the company shall publish an advertisement, not less than five days prior the commencement of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which registered office of the company is located, and having a large circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters, namely:-

a) statement that the business may be transacted by e-voting;

b) the date of completion of sending of notices;

c) the date and time of end of voting through electronic means;

d) the date and time of end of voting through electronic means;

e) the statement that voting shall be permitted beyond the said date and time;

f) website address of the company and agency, if any, where notice of the meeting is mentioned.

g) contact details of person responsible to address the grievances connected with the electronic voting.

(vi) the e-voting shall remain open for not less than one day and not more than three days.

*In all such cases, such voting period shall be completed three days prior to the date of the general meeting.*

(vii) during the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically.

*Once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.*
(viii) at the end of the voting period, the portal where votes are cast shall forthwith be blocked.

(ix) the board of directors shall appoint one scrutinizer, who can be a Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a renowned person, who, in the opinion of the Board can examine the e-voting process by adhering transparency.

The scrutinizer so appointed may take help of a person who is not in employment of the company and who is conversant with the e-voting system.

(x) the scrutinizer shall be willing to be appointed and be available for the purpose of determining the requisite majority;

(xi) the examiner/scrutinizer shall, within a period of not exceeding three working days from the date of the conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the company and make a scrutinizer’s report of the votes cast in favour or against, if any, forthwith to the Chairman;

(xii) the scrutinizer shall keep the a register either manually or electronically to register the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares under their possession, nominal value of such shares and whether the shares carry differential voting rights;

(xiii) the register and other necessary papers pertaining to electronic voting shall be kept in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the register and other related papers to the company.

(xiv) the results declared along with the scrutinizer’s report shall be hosted on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members;

(xv) subject to receiving of adequate votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

“Secure Platform”- A Probable Barrier

A basic issue that may come across in developing remote electronic voting systems, i.e. the “secure platform problem.” Cryptography is not the bone of contention. Indeed, several magnificent cryptographic voting protocols have been proposed. The problem lies in interfacing the voter to the cryptography. Almost all proposed cryptographic voting protocols assume that a voter has a secure computing platform that will be trustworthy. The platform (e.g. a PC) will correctly show the voter his/her intended vote, and cryptographically submit his/her vote during the protocol. The platform acts as voter’s “trusted agent” during the voting protocol. What is quintessential here is that the platform is the voter as far as the voting protocol is concerned.
In reality, the present generation of personal computers running Windows or Unix may not be adequately secure to act as trusted voting agents. These operating systems and their applications are far too susceptible to viruses and Trojan horses. A hacker could easily write a virus that would cause the voter’s computer to show her voting for one candidate while actually voting for another. If thousands and lakhs of PCs are similarly infected, an election could be manipulated. This is an unacceptable risk.

**Way Forward**

Despite the mentioned hurdle, it does not imply that companies must hesitate from embracing e-voting. Apart from being a mandatory process, it is also equally true that we are living in the age where rapid transit of information and mass participation is a necessity. But what is important is careful handling. In view of this, it must be ensured that voting systems are certified before they are put to use. If properly installed, e-voting can eradicate certain common avenues of fraud, speed up the processing results, enhance accessibility and make voting more easy for shareholders. When used over a series of electoral events, it may possibly bring down the cost of elections in the long run. The other benefits associated with e-voting are: Faster vote count and tabulation; More accuracy in results due absence of human error; More attuned to the needs of an increasingly scattered investors etc.

Thus, any process brings with it certain advantages and challenges (if not disadvantages), but if it is good for the society or stakeholders at large then it must be embraced. There may be initial hiccups in its launching and operating but later on the journey becomes smooth. Only point we need to borne in mind is that process or mechanise must be "Agile and not Fragile".

**References**

2. http://www.mondaq.com/india/x/208666/Shareholders/eVoting+A+New+Mandate+For+Listed+Companies
POSSIBILITY OF PROXY

Aishwarya Mohan Gahrana, Practising Company Secretary

According to Rule 19(1) of the Companies (Management and Administration) Rules 2014, a member shall appoint any other member of the company as his proxy. The Rule 19(1) contradict Section 105(2) which say in every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that member entitled to appoint a proxy and a proxy need not be a member. This contradiction is not worth discussing because it may be corrected by a mighty stroke of pen by the Ministry. More prominent question is whether institution of proxies stands under new corporate law regime.

According to first proviso to Section 105(1) a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. Unless there is poll, there will be no proxy. Section 107 says at any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands. Section 106(3) say, on a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

According to these provisions, unless a poll is demanded, there will be no need or significance of a proxy in a meeting.

Section 108 empowers Central government to make Rules for electronic voting for passing of resolutions. Accordingly, Rule 20(1) enumerates companies where electronic voting shall take place. Every listed company or a company having not less than one thousand shareholders shall provide, to its members facility to exercise their right to vote at general meetings by electronic means. The term “shall” denote mandatory electronic voting in these companies. These companies shall use electronic voting for all kind of resolutions. These rules do not differentiate between ordinary or special business. The very nature of electronic voting facilitates a member of a company to vote on a resolution, to vote from anywhere. When a member can vote from anywhere in a poll, why will there be a need to appoint a proxy? Even though all companies need to permit appointment of proxies, members of companies under compulsory electronic voting, practically have not need to appoint.

Now, proviso to Rule 22(16) dealing with postal ballot under Section 110 of the Companies Act 2013 suggest provisions relating to postal ballot shall apply to all companies having two hundred or more members. According to this Rule, postal ballot means voting by post or through electronic means.

As per Section 110 of the Act, every company shall transact businesses notified by Central Government through postal ballot only not in general meeting. Any company may transact any business through postal ballot except –

(i) ordinary business in an annual general meeting; and

(ii) business in respect of which directors or auditors have a right to be heard at any meeting.
Rule 22(16) list following items of business shall be transacted only by means of voting through a postal ballot-

(a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;

(c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) Issue of shares with differential rights as to voting or dividend or otherwise under subclause (ii) of clause (a) of section 43;

(f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) Buy-back of shares by a company under sub-section (1) of section 68;

(h) Election of a director under section 151 of the Act;

(i) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;

(j) Giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186.

Thus, combined reading of Section 110 of the Act and Rule 22 of these rules suggests that every company with two hundred or more shall transact certain item with postal ballot or through voting through electronic means and these company may transact all other special businesses also through postal ballot or through voting through electronic means. All other companies may also transact all its special businesses through postal ballot or electronic voting.

Section 110 of the Act specifically excludes all ordinary businesses and any business in respect of which directors or auditors have a right to be heard at any meeting, form postal ballot or electronic voting in these companies. Section 108 being an independent provision does not grand such an exception to listed companies and other companies with not less than one thousand members.
Combined reading of Section 108 and section 110 along with these rules suggest that only in following situations demand of poll may arise:

1. For all items of ordinary and special businesses to be transacted in general meeting of a company with less than two hundred members which has not opted for postal ballot or electronic voting;

2. For all items in ordinary businesses in general meeting of a company with less than two hundred members which has opted for postal ballot or electronic voting for all its special business businesses;

3. Any business in respect of which directors or auditors have a right to be heard at any meeting with less than one thousand members, whether or not such company has opted for postal ballot or electronic voting.
Appointment of Directors and Check List of what to do by a CS

M. GopalRathnam, Practising Company Secretary

Appointment of Directors and check list of what to do by a CS.

| The Companies Act 2013 has re-defined and refined the provisions relating to Directors. |
| New definitions like Listed companies, Nominee Director, securities and terms of appointment of alternate directors, Independent directors, Remuneration committee, Audit committee etc may need certain clarifications from MCA. |
| Even a private limited company, if it has listed its debentures, it may have to follow the provisions section 151 to elect a director for small shareholder, for appointment of audit committee under section 177 and remuneration committee under section 178. |
| DIN is made pre-requisite for appointment of a person as a director. Consent and additional declaration is required to be given. |
| Revised section on vacation of office is worth noting. |
| This Article is to review at a glance about the provisions of the Act 2013 and steps to be taken by CS. |

DIN- Pre-requisite

As per section 154 of the companies Act 1956, Director Identification Number is the pre-requisite for a person to be appointed as a director of a company.

Appointment

Director may be appointed through Articles of Association, or by members in a general meeting or by the Board of Directors or by Tribunal under section 242. Appointment of Directors is analysed in brief as under:

1. Appointment on incorporation- First Director

As per section 152 (1), in the absence of regulation for first director in the articles of a company, the subscribers to the memorandum who are individuals shall be deemed to be the first directors until the directors are duly appointed.

In case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member. Thus One Man company can appoint one or more Director either while forming the company or after its formation.

2. Appointment in General Meeting.

As per section 152 (2) every director shall be appointed by the company in general meeting except those which are expressly provided in the Act.
1. Every person proposed to be appointed as a director in general meeting shall:
   
a. Furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act in a form to be prescribed in Rule. Sec 152 (4)
   
b. He gives his consent to hold the office as director. Sec-152(5)
   
c. In the case of appointment of an independent director in the general meeting, an explanatory statement is to be annexed to the notice. Explanatory stamen shall include a statement that in the opinion of the Board, he fulfils the conditions specified in Act for such an appointment.

2. Under section 163, company may appoint not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years.

3. **Appointment by the Board.** The Board derives its power under the regulations contained in the Articles of Association. The Board has power to appoint following categories:

   1. **Additional director:** The Board of Director under Section 161 (1) of the Companies Act 2013 may appoint additional director, provided:
      
a. the articles confer power to its Board of Directors to appoint additional director. Where a company adopts Table F as its Articles of Association, Regulation 66(1) of Table F provide for appointment of additional director, and
   
b. such a person should not be the one who fails to get appointed as a director in a general meeting.
   
c. Such a director shall hold office till the date of the next annual general meeting.

   2. **Alternate director,** The Board of Director under Section 161 (2) may appoint alternate director, if authorised by its articles or by a resolution passed by the company in general meeting. Since the Act is silent, one can presume it to be an ordinary resolution. However, following two conditions are to be met for appointing an alternate Director:
      
a. Such a person is not holding alternate directorship of another director already.
   
b. A person in order to be appointed as an alternate director of an independent Director he himself shall be qualified to be appointed as an independent director.
   
c. Alternate director shall not hold office beyond the period in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.
   
d. Alternate Director shall cease to be as such if the original director is cease to be a director before he returns to India.

   3. **Nominee director:** The Board of Director under Section 161 (3) may appoint nominee director as provided in the articles of association or as per any agreement with institutions or by the Central Government or the State Government by virtue of its shareholding in a Government company.

   4. **Casual vacancy:** In the case of a public company, its Board may fill casual vacancy subject to regulations contained in the articles of the company under section 161(4).
Since section 161(4) applies to public company, it is not clear if a private company can fill casual vacancy. Since section does not prohibit a private company from filling casual vacancy, it is absolutely necessary to have a regulation in its articles. Even though section 161 (4) applies to a public company, its Articles hall also have enabling regulation to fill casual vacancy.

A casual vacancy include vacancy arising out of director appointed by members or Board including directors appointed by the members in accordance with the principle of proportional representation.

Since Table F is silent about filling casual vacancy, alternate director, & nominee director, it is necessary to have proper regulation in the Articles of Association whether it is private company or public company.

**Check list of what to do by a CS**

1. Under section 152 (4), it is necessary to Obtain details of DIN and a declaration for eligibility before appointment (sec 152(3)).
2. It is necessary to cross verify the address furnished in the consent letter with address as per MCA Data. DIN entered in a dummy Form 32, will help to ascertain the registered address and other details. If there is variation, please file DIN 4 as per the present address and thereafter file form 32.
3. Take a consent letter – sec 152(5).
4. Take a declaration that he is not disqualified to become a director under this Act. Besides section 164, which indicates disqualification for appointment of director, there are several sections which make a person disqualify to become a director. Format of consent Cum Declaration covering these points are provided as Annexure- A
5. In case of a candidate for Independent Director it is necessary to take a declaration that
   a. Within the meaning of section 149 (6), he, in his name and /or in the name of all his relatives, do not hold more than 2% of the shares of the company as on date.
   b. He shall abide by the provisions specified in Schedule IV.(under section 149(8) regarding CODE FOR INDEPENDENT DIRECTORS.
   c. As an independent director he shall give a declaration that he meet the criteria of independence every year as provided in section 149(6).
   d. He shall attaching a resume for the purpose of the records of the company and for preparing explanatory note for considering a resolution for his appointment.

**Audit Committee & Remuneration Committee - even a private company which has listed its debentures is covered under the definitions**

It is necessary to review the following definition in order to constitute Audit committee and Remuneration committee.

- As per Section 2 (52) - “listed company” means a company which has any of its securities listed on any recognised stock exchange
- As per section 2 (81) “securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- As per section 2 (h) of Securities Contracts (Regulation) Act, 1956 “securities” include (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate; and (ia) derivative;
If a private company lists its debentures, which is permissible under SEBI Act, it has to be called a listed company within the meaning of above definitions. If so, is it necessary for a private listed company to appoint audit committee? Or Remuneration committee?. This needs clarification from MCA for section 151, 177(1) and 178(1). Section 151 states that a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

- Similarly section 177 (1) states that the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
- 178. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:

Consent to act as Director of a Company.
The Companies Act, 2013
{Pursuant to section 152 (4) (5)}
And Declaration

To the Board of Director
Name of the Company......Ltd.
Place :...........

Sir,

1. I, the undersigned, hereby testify my consent to act as Director of the your company and I certify that I have been allotted DIN and details of my DIN is furnished hereunder.
2. Further I declare that I have not been disqualified or not restrained / removed under the provisions of the Companies Act, 2013 including sections 164, 165, 167, or any provisions of the said Act.
3. There was no resolution moved in General meeting for my appointment and failed to get appointed as a director in the general meeting
4. I further declare that:
   a. I reside in India and stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year
   b. I seek appointment as (1) Additional Director (2) Alternator Director (3) Nominee Director (4) Independent Director (5) Whole Time Director (6) Director.
   c. In Accordance with section 165, I do not hold office as a director, including any alternate directorship, in more than twenty companies including directorship of not more than 10 public companies
   d. In accordance with section 166, I shall act in accordance with the articles of the company and the companies Act 2013.

My DIN and Details are as under
(Note: following snapshot of Form 32 helps in avoiding mistakes in details & address)
A separate Declaration from Independent director on the letter head of the Director may be obtained covering the following points.

As a candidate for Independent Director I declare that

a. Within the meaning of section 149 (6), I in my name and /or in the name of all my known relatives, do not hold more than 2% of the shares of the company as on date.

b. I shall abide by the provisions specified in Schedule IV.(under section 149(8) regarding CODE FOR INDEPENDENT DIRECTORS.

c. As an independent director I shall give a declaration that I meet the criteria of independence every year as provided in section 149(6).

d. I am attaching a resume for the purpose of the records of the company and for preparing explanatory note for considering a resolution for my appointment.

Place

Date Signature
CIRCULARS / NOTIFICATIONS
To
All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification with regard to voting through electronic means reg.

Sir,

Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 deal with the exercise of right to vote by members by electronic means (e-means). The provisions seek to ensure wider shareholders participation in the decision making process in companies. Corporates and other stakeholders while appreciating the new approach have drawn attention to some practical difficulties in respect of general meetings to be held in the next few months.

2. The suggestions received from the stakeholders have been examined. It is noticed that compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/postal ballot etc will take some more time. Accordingly, it has been decided not to treat the relevant provisions as mandatory till 31st December, 2014. The relevant notification in this regard is being issued separately.

3. To provide clarity and ensure uniformity in the e-voting procedure, clarifications on certain issues raised by the stakeholders are provided in the Annexure to this circular for guidance of all concerned.

This issues with the approval of the competent authority.

Yours faithfully

[Signature]

Assistant Director

23347263

Copy to:-
1. e Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File
Annexure

Clarifications on issues associated with e-voting procedure

(i) Show of hands not to be allowed in case of e-voting: In view of clear provisions of section 107, voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.

(ii) Participation in the general meeting after voting by e-means: It is clarified that a person who has voted through e-voting mechanism in accordance with rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.

(iii) Applicability of rule 20 for matters specified under rule 22(16): Stakeholders have asked whether matters specified under rule 22(16) (transactions of certain items only through postal ballot) can be considered in a general meeting where e-voting facility is available. It has been examined and it is stated that in view of clear provisions of section 110(1Xa) read with such rule 22(16) it would be necessary to transact items specified in rule 22(16) only through postal ballot and not at the general meeting.

(iv) Relevance of provisions relating to demand for poll: In case of companies having share capital, voting through e-means takes into account 'Proportion principle'[i.e. 'one share - one vote] unlike one person - one vote' principle under 'show of hands'. This alongwith provisions of section 107 make it clear that in case of companies which are covered under section 10g read with rule 20 of Companies (Management and Administration) Rules, the provisions relating to demand for poll would not be relevant.

(v) Permissibility of voting by postal ballot under rule 20: Stakeholders have sought a clarification that in cases (covered under rule 20) where a shareholder who is not able to participate in the general meeting personally and who is also not exercising voting through e-means whether such a person shall have the option to vote through postal ballot. The matter has been examined and it is felt that keeping in view the provisions of the Act such an option would not be available.

(vi) Manner of voting in case of shareholders present in the meeting: Stakeholders have sought clarity about manner of voting for shareholders (of a company covered under rule 20) who are present in the general meeting. It is hereby clarified that since voting through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting accordingly.

(vii) Applying rule 20 voluntarily: Stakeholders have referred to words A company which opts to appearing in rule 20(3) and have raised a query whether rule 20 is applicable to companies not covered in rule 20(1). It is clarified that rule 20(3) is being amended to align it with rule 20(1). Regarding voluntary application of rule 20, it is clarified that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in rule 20 shall be applicable to such a company. This is necessary so that any piece-meal application does not prejudice the interest of shareholders.
To,
All Regional Director,
All Registrar of Companies,
All Stakeholders

Subject: - Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

Sir,

This Ministry has received several references and representation from stakeholders seeking clarifications on the provisions under Section 135 of the Companies Act, 2013 (herein after referred as ‘the Act’) and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013. Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as (‘CSR’) are as under:-

(i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.

(ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

(iii) Expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

(iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company’s time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

(v) “Any financial year” referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies ‘any of the three preceding financial years’.

(vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

(vii) ‘Registered Trust’ (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

2. This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-
(Seema Rath)
Assistant Director (CSR)
Phone No. 23389622

Copy to:
1. PSO to Secretary
2. PPS to Additional Secretary
3. PS to DG (IICA)/JS (M) /JS(B)/JS(SP)/DII (UCN)/EA/DII(POLICY)
4. DIR (AK)/DIR (AB)/DIR(NC)/DIR(PS)
5. e-Governance Cell for uploading on website of MCA
### Annexure referred to at para (i) of General Circular No. 21/2014 dated 18.06.2014

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act</th>
<th>Whether covered under Schedule VII of the Act</th>
</tr>
</thead>
</table>
| 1.      | Promotion of Road Safety through CSR:  
   (i) (a) Promotions of Education, “Educating the Masses and Promotion of Road Safety awareness in all facets of road usage,  
   (b) Drivers’ training,  
   (c) Training to enforcement personnel,  
   (d) Safety traffic engineering and awareness through print, audio and visual media” should be included.  
   (ii) Social Business Projects:  
   “giving medical and Legal aid, treatment to road accident victims” should be included. | (a) Schedule VII (ii) under “promoting education”.  
   (b) For drivers training etc. Schedule VII (ii) under “vocational skills”.  
   (c) It is establishment functions of Government (cannot be covered).  
   (d) Schedule VII (ii) under “promoting education”.  
   (ii) Schedule VII (i) under ‘promoting health care including preventive health care.’ |
| 2.      | Provisions for aids and appliances to the differently-able persons - ‘Request for inclusion | Schedule VII (i) under ‘promoting health care including preventive health care.’ |
| 3.      | The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:  
   (a) Capacity building for farmers covering best sustainable farm management practices.  
   (b) Training Agriculture Labour on skill development. | Item no. (ii) of Schedule VII under the head of “promoting education” and “vocational skills” and “rural development”.  
   (a) “Vocational skill” livelihood enhancement projects.  
   (b) “Vocational skill” |
| 4.      | To make “Consumer Protection Services” eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre).  
   (i) Providing effective consumer grievance redressal mechanism.  
   (ii) Protecting consumer’s health and safety, sustainable consumption, consumer service, support and complaint resolution.  
   (iii) Consumer protection activities.  
   (iv) Consumer Rights to be mandated.  
   (v) all consumer protection programs and activities” on the same lines as Rural Development, Education etc. | Consumer education and awareness can be covered under Schedule VII (ii) “promoting education”. |
| 5.      | a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would | Conservation and renovation of school buildings and classrooms |
qualify as “promoting education” and hence eligible for compliance of companies with Corporate Social Responsibility.

b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as “protection of national heritage, art and culture, including restoration of buildings and sites of historical importance” and hence eligible for compliance of companies with CSR.

<p>| | | |</p>
<table>
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<tbody>
<tr>
<td>6.</td>
<td>Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and Technology.</td>
<td>Schedule VII (ii) under “promoting education”, if approved by Department of Science and Technology.</td>
</tr>
<tr>
<td>7.</td>
<td>Disaster Relief</td>
<td>Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example, (i) medical aid can be covered under ‘promoting health care including preventive health care.’ (ii) food supply can be covered under eradicating hunger, poverty and malnutrition. (iii) supply of clean water can be covered under ‘sanitation and making available safe drinking water’.</td>
</tr>
<tr>
<td>8.</td>
<td>Trauma care around highways in case of road accidents.</td>
<td>Under ‘health care’.</td>
</tr>
<tr>
<td>9.</td>
<td>Clarity on “rural development projects”</td>
<td>Any project meant for the development of rural India will be covered under this.</td>
</tr>
<tr>
<td>10.</td>
<td>Supplementing of Govt. schemes like mid-day meal by corporates through additional nutrition would qualify under Schedule VII.</td>
<td>Yes. Under Schedule VII, item no. (i) under ‘poverty and malnutrition’.</td>
</tr>
<tr>
<td>11.</td>
<td>Research and Studies in the areas specified in Schedule VII.</td>
<td>Yes, under the respective areas of items defined in Schedule VII. Otherwise under ‘promoting education’.</td>
</tr>
<tr>
<td>12</td>
<td>Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.</td>
<td>No.</td>
</tr>
<tr>
<td>13</td>
<td>Sustainable urban development and urban public transport systems</td>
<td>Not covered.</td>
</tr>
<tr>
<td>14</td>
<td>Enabling access to, or improving the delivery of,</td>
<td>Can be covered under both the heads of “healthcare” or “measures</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>public health systems be considered under the head “preventive healthcare” or “measures for reducing inequalities faced by socially &amp; economically backward groups”?</td>
<td>for reducing inequalities faced by socially &amp; economically backward groups”, depending on the context.</td>
</tr>
<tr>
<td>15. Likewise, could slum re-development or EWS housing be covered under “measures for reducing inequalities faced by socially &amp; economically backward groups”?</td>
<td>Yes.</td>
</tr>
<tr>
<td>16. Renewable energy projects</td>
<td>Under 'Environmental sustainability, ecological balance and conservation of natural resources'.</td>
</tr>
<tr>
<td>17. (i) Are the initiatives mentioned in Schedule VII exhaustive? (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2(c)(ii) of the Final Rules, they will count)?</td>
<td>(i) &amp; (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.</td>
</tr>
<tr>
<td>18. US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.</td>
<td></td>
</tr>
</tbody>
</table>
To
All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification with regard to format of annual return applicable for Financial Year 2013-14 and fees to be charged by companies for allowing Inspection of records.

Sir,

Government has received requests for clarification about the applicability of form of annual return (MGT-7) prescribed under rule 11(1) of the Companies (Management and Administration) Rules, 2014 for financial year(s) commencing earlier than 16th April, 2014. The matter has been examined in the light of provisions of section 92(1) of the Act which requires annual return to contain particulars as they stood on the close of the financial year. It is, clarified that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956.

2. Companies have also sought clarity about permitting free of cost inspection of records under rule 14(2) and rule 16 of the rules cited above and till a fee is prescribed for the purpose in the Articles. It is clarified that until the requisite fee is specified by companies, inspections could be allowed without levy of fee.

3. This issues with: the approval of the competent authority.

Yours faithfully

(KMS Narayanan)
Assistant Director

Copy to:-
1. e Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File
To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification relating to incorporation of a company i.e. company Incorporated outside India

Sir,

Government has received references seeking clarity about the status of subsidiaries incorporated/to be incorporated by companies incorporated outside India. Attention has, in particular, been drawn to the absence of the deeming provision of sub-section (7) of section 4 of the Companies Act, 1956 in the Companies Act, 2013 (New Act).

The matter has been examined in the Ministry in the light of sections 2(68), 2(7I) and 2@7'l of the New Act and it is clarified that there is no bar in the new Act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company. An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act, will continue as a private company or public company as the case may be, without any change in the incorporation status of such company.

3. This issues with approval of Competent Authority.

Yours faithfully

Assistant Director

Copy to:-
1. PPS to Secretary
2. PPS to Addl. Secretary
3. PS to JS(M)/ PS to JS(B)/ PPS to JS(SP)
4. Dir(AK) / Dir(AB) / Dir(NC)/ Dir(PS)
To
All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013.

Sir,

In continuation of the General circular No. 20/2013 dated 27/11/2012, it is clarified that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

2. This issues with approval of Competent Authority.

Yours faithfully

Assistant Director
23387263

Copy to:-
1. PPS to Secretary
2. PPS to Addl. Secretary
3. PS to JS(M)/ PS to JS(B)/ PPS to JS(SP)
4. Dir(AK) / Dir(AB) / Dir(NC)/ Dir(PS)
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, the 13th June, 2014

S.O. 1524(E).— In exercise of powers conferred by section 448 of the Companies Act, 1956 (1 of 1956), the Central Government hereby establish the office of the Official Liquidator at Hyderabad having territorial jurisdiction for the purposes of the said Act for discharging the functions of the Official Liquidator in the whole State of Telengana and appoints the Official Liquidator at Hyderabad as Official Liquidator for the liquidation of companies under the said Act in the State of Telengana.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[F. No. 7/4/2014-CL.I(A)]
AMARDEEP SINGH BHATIA, Jt. Secy.

2450 GI/2014
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, the 13th June, 2014

S.O. 1525(E).—In exercise of powers conferred by sub-section (1) and sub-section (2) of Section 396 of the Companies Act, 2013 (18 of 2013), the Central Government hereby establish the office of the Registrar of Companies at Hyderabad having territorial jurisdiction in the whole State of Telangana for discharging the functions of the Registrar of Companies under the various provisions of the said Act and appoints the Registrar of Companies, Hyderabad as Registrar of Companies for the purpose of registration of companies under the said Act in the State of Telangana.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[F. No. 7/4/2014-CL.I(B)]
AMARDEEP SINGH BHATIA, Jt. Secy.

2451 GI/2014
No. I/22/13-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi

Dated :- 26th June, 2014

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification on applicability of requirement for resident director

Sir,

Section 149(3) of the Companies Act, 2013 (Act) requires every company to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. Government has received requests from stakeholders for clarification with regard to applicability of these provisions in the current calendar/year.

2. The matter has been examined. It is clarified that the 'residency requirement' would be reckoned from the date of commencement of section 149 of the Act i.e. 1st April, 2014. The first ‘previous calendar year’ for compliance with these provisions would, therefore, be Calendar year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e. 1st April to 31st December). Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India during Calendar year 2014, shall exceed 136 days.

3. Regarding newly incorporated companies it is clarified that companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.

This issues with the approval of the competent authority.

Yours faithfully

(KM S Narayanan)
Assistant Director (Policy)
23387263

Copy to:- 1. e-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File
General Circular No. 26/2014

No. 2/2/2014-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, ‘A Wing’, Shastri Bhawan,
Dr R.P. Road, New Delhi –110001

Dated :- 27th June, 2014

To
All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification with regard to use of the words “Commodity Exchange” in a company-reg.

Sir,

In continuation of this Ministry's circular no. 02/2014 dated 11.02.2014, it is hereby clarified the use of the word "Commodity Exchange" may be allowed only where a "No Objection Certificate" from the Forward Markets Commission (FMC) is furnished by the applicant. All other provisions of the Companies (Incorporation) Rules, 2014 will continue to be applicable.

2. It is also clarified that the certificate from Forward Markets Commission will also be required in cases of companies registered with the words "Commodity Exchange’ before the issue of this circular.

3. This issues with the approval of competent authority.

Yours faithfully

(KM S Narayanan)
Assistant Director (Policy)

23387263

1) E-Governance cell and Web Contents officer to place this Circular on Ministry's Website.
2) Guard File
F. No. MCA21/123/2014/e-Gov. Cell

To,

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Sub: - Clarification regarding filing of Form DPT4 under Companies Act, 2013.

Sir,

This Ministry has received reference regarding filing of Form DPT4 under the provisions of the Companies Act, 2013. As per section 74(l)(a) of the Companies Act, 2013 and the companies (Acceptance of Deposits) Rules, 2014 made there under, companies are required to file a statement regarding deposits existing as on date of commencement of the Act within a period of 3 months from such commencement. The time for filing of said statement is expiring on 30-06-2014.

2. After considering the reference, it has been decided to grant extension of time for the period of 2 months i.e. up to 31-08-2014 without any additional fee in terms of section 403 of the Act to enable the companies for filing of statement under Form DPT4 with the Registrar.

Yours faithfully,

Copy to:-
1) e-Governance Section and Web Contents Officer to place this circular on Ministry's Website.
2) Guard File
Articles / Reviews invited for e-CS Nitor

We invite the members to contribute articles/checklist/reviews or any other relevant material pertaining to the Companies Act, 2013 for inclusion in the coming issues of e-CS nitor through e-mail at: ecsnitor@icsi.edu.

Broad topics for submission of Articles

- Annual Return
- AGM
- Bonus Shares
- Preferential issues
- Board Disclosures
- Incorporation
- Incorporation conversion
- Shareholders democracy
- Acceptance of Deposits
- Rules under Companies Act, 2013
- Resolutions to be filed under Companies Act, 2013
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The CS Helpline – 011-33132333 is operational from 7.00 AM to 11.00 PM on all days.
42nd National Convention of Company Secretaries

Days: Thursday-Friday-Saturday
Dates: 21-22-23 August, 2014
Venue: Science City, Dhapa, Kolkata

Theme:
CS – Change. Challenge. Opportunity

Kindly block these dates in your diary. Other details about the National Convention being hosted on ICSI website shortly.

VISION
To be a global leader in promoting good corporate governance

MISSION
To develop high calibre professionals facilitating good corporate governance

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e-mail: info@icsi.edu website: www.icsi.edu / www.icsi.in

10 PCH for Members
Twenty five PDP for Students