

Chapter 1

Introduction

Corporates being driven by the stakeholder's democracy are haiping upon the use of technology in important decisions making. Companies with a large shareholders base require the active involvement and participation by the investors in major decisions impacting the shareholders, which can be achieved easily with the help of e-voting infrastructure. E-voting not only accelerates the whole voting-process, but makes it less expensive and more comfortable for the voters and the organisations as well. It also, reduces the chances of the errors.

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.

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.

Voting by electronic means is a facility given to the members of a company to cast their votes on the resolutions through electronic mode. 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. Boards in their fiduciary capacity are now looked upon for greater accountability and transparency for the effectiveness of their overall governance process. E-Voting is a further step to encourage corporate democracy and to promote good corporate governance.

E-voting allows a voter to record his or her secure and secret ballot electronically. E-voting are generally used in government elections like general elections, state legislative assembly elections etc. and considered as a tool of effective governance in voting infrastructure.

E-voting is a common Internet infrastructure that enables the investors to vote electronically on resolution of companies. Shareholders normally exercised their votes on resolutions proposed by companies through postal ballot. If a company decides to pass any resolution by resorting to postal ballot, it will send a notice to all the shareholders, requesting them to send their assent or dissent in writing on a postal ballot.

The Companies Act, 2013 had ushered in the concept of e-voting to ensure wider shareholder participation in the decision-making process in companies. E-voting process has been introduced in order to secure wider participation of Shareholders in the important decisions of the company since postal method of voting has its own limitation. The process—of seeking shareholders' approval through postal ballot—is not only time consuming but also involves huge cost such as administration and posting costs, paper work, etc. To avoid all these hassles, the new Companies Act 2013, has introduced the concept of voting through electronic means. Passing of appropriate resolutions by shareholders of companies and increased shareholder participation therein is an important factor for good Corporate Governance.

E-VOTING : GLOBAL PRACTICES

Electronic voting has been evolving in world over much of the past decade. Apart from the developed nations like UK & USA, below are some of the markets that have adopted or are in the process of adopting e-voting:

Korea

K-evote, an electronic voting system for exercising voting rights through the internet (<http://evote.ksd.or.kr>), was launched on September 23, 2010 by the Korea Securities Depository (KSD). Companies that opt for the electronic voting system by a resolution by the board of directors will register their shareholders meeting agenda in advance at the KSD. Shareholders will be able to access the website in order to vote from 10 days prior to the date of the shareholders' meeting until the day before the meeting.

Korea Ship Finance Co., Ltd. was the first company to adopt the electronic voting system in September 2010.

Taiwan

Taiwan regulators amended the law in 2006 to allow electronic transmission of share votes. In 2009, the Taiwan Depository & Clearing Corporation (TDCC) established a domestic e-voting platform called "StockVote". It allows shareholders to vote electronically up to five days ahead of the AGM.

The adoption of StockVote has been limited; few companies signed up to use it. The main reason for the reluctance of listed companies is that the vast majority of them prefer to vote by acclamation. Taiwan regulators are aware of this, which is why in July 2009 the Executive Yuan, the cabinet, approved for presentation before parliament an amendment to Article 177-1 of the Company Act authorising, "the competent authority, by considering the scale, shareholder numbers and structure of shareholders of such company, and other situations it deemed to be necessary, may order a company to include electronic voting as one of the company's shareholder meeting voting methods".

Pakistan

The Securities and Exchange Commission of Pakistan (SECP) initiated the process for e-voting to facilitate members to vote for resolutions in the general meetings through e-voting. The SECP has provisionally approved the e-voting scheme and has drafted relevant regulations.

The proposed regulations provide that companies shall communicate to their members the option to participate, through e-voting, in the business to be approved at the general meeting. The members opting for e-voting shall have to appoint the intermediary, nominated by the company, as their proxy. Members intending to cast an electronic vote are required to be authenticated through secured electronic signature provided by the intermediary, and shall cast vote online through the website of intermediary during the time specified in the notice of the meeting. The intermediary is required to keep the result of electronic vote confidential and cast vote on behalf of members acting as their proxy during the time of poll.

The process of e-voting is exhaustively elaborated through regulations in such a manner that it will not prevent the members from exercising their rights. For this purpose companies will have to make provision for taking a poll as the mode of voting and the appointment of non-member as a proxy in the respective articles of association if not, already provided. The choice and the manner of exercise of proxy

e-voting shall be communicated to the shareholder through notice of meeting.

The regulations lay down qualifications and criteria for the intermediary for the process of e-voting and will be appointed by the company at least 30 days before meeting and shall have a certificate of accreditation issued by the Electronic Certification Accreditation Council established under Section 18 of the 2002 Electronic Transactions Ordinance.

The Companies (Proxy E-Voting) Regulations, 2014, were placed before the Policy Board for its approval before publishing them to elicit the public opinion.

Turkey

Turkey's New Company Law paved the way for its national stock exchange to require the issuers change their company statutes in order to allow electronic participation and voting at their general meetings. Regulation regarding participation to General Meetings of joint stock companies on Electronic Medium issued by the Turkish Republic Ministry of Customs and Trade on the 28th August 2012 and associated procedural rules marked Turkey as the first country to require companies listed on its stock exchange (Istanbul Stock Exchange, ISE) to allow shareholders, custodians and intermediaries to participate and vote at general shareholders meetings via an electronic platform.

Article 1527 of the New Commercial Law (NCL) established the legal basis that electronic participation and voting have the same legal consequences as physical participation and voting for all joint stock companies, while providing electronic General Meetings compulsory for listed companies. The regulations also provide the procedures for unlisted joint stock companies to offer electronic General Meetings on an optional basis.

China

Chinese issuers do not send communications directly to shareholders. Instead, information is disseminated via public media and newspapers. The shareholder is responsible for monitoring these outlets for information on their investee companies and printing any forms needed for voting.

Shareholders can vote via paper or in person at the meeting for general resolutions. For special resolutions, electronic voting is

mandatory. The issuer is required to choose one online voting platform, which may be provided by either Shanghai Stock Exchange or Shenzhen Stock Exchange etc. The on-site votes and the online votes will be reconciled by the online voting platform. If the investor voted the same shares both online and in person, the first vote in recorded time sequence counts. Additionally, they can vote directly or via proxy. Only shareholders directly visible on the share register, or their proxies, are able to vote.

Japan

Shareholders may vote in person or by proxy. The particular structure of the proxy season in Japan, compounded by the substantial number of investors holding through nominees, resulted in substantial inefficiencies in the voting process and reduced participation. Most intermediaries require proxy materials to be returned to them 10 days prior to the meeting, leaving too tight a window for effective participation in voting across all Japanese meetings.

Paper ballots were previously the default voting mechanism in Japan, which had to be lodged by the registered shareholder. As a result of the issues described above, there has been a movement over the past few years to an electronic voting platform operated by Investors Communication Japan (ICJ). This is an optional service for issuers, facilitating the communications and voting process between the issuer, intermediaries and institutional investors. By using the platform, investors are able to receive meeting notices on the day of release and send their voting instructions up to the day before the meeting.

New Zealand

New Zealand companies have increased flexibility to communicate with shareholders electronically and conduct virtual shareholder meetings as a result of amendments to the Companies Act, 1993 under the Companies Amendment Act (No 2) 2012. The amendments came into force on 31 August, 2012.

The New Zealand legislation is in line with foreign jurisdictions such as Australia and the UK, where electronic shareholder participation is widely utilised.

A summary of the key amendments to the New Zealand's Companies Act and some of the options now available as a result of those amendments are outlined below:

- Shareholder meetings: In addition to attending a physical meeting, a shareholder (or their proxy or representative) may participate in a shareholder meeting by means of "audio, audio and visual, or electronic communication" with the approval of the board of the company (and those participants will be counted as part of the quorum for the meeting). This provides companies with more flexibility to use technology for shareholder meetings. For example, it is now permissible to hold shareholder meetings which involve an interactive broadcast between remote shareholders participating online as well as, if applicable, a physical meeting.
- Shareholder voting: Voting may take place at shareholder meetings by "any method permitted by the chairperson" and approved by the board. This will allow companies to determine how votes may be cast at a shareholder meeting. It will also allow a company to take advantage of technological developments as they occur. In today's technological environment, it could allow electronic real-time voting during a shareholder meeting by remote shareholders participating in the meeting online.
- Electronic postal votes: Postal votes may be cast using electronic means permitted by the board. For example, a shareholder may exercise their voting rights online prior to a shareholder meeting without the need to attend the meeting or to appoint a proxy or representative.
- Electronic proxies: Proxies may be appointed electronically. For example, proxy instructions may be submitted to share registrars via the internet.

Switzerland

Switzerland is about to adopt the e-voting mechanism as listed Swiss companies have to comply with a new law mandating shareholder e-voting. The new law is the result of Swiss public dissatisfaction with spiraling levels of boardroom pay and will be effective on 1st January, 2015.

Malaysia

Malaysian Corporate Governance Code, 2012 provides that the board should direct the company to disclose all relevant information to shareholders to enable them to exercise their rights and board should also consider adopting electronic voting to facilitate greater shareholder participation.
