

E-Governance

A Handbook

The Companies Act, 2013 Series



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ICSI House, 22, Institutional Area, Lodi Road, New Delhi - 110 003

Phones : 41504444, 45341000 ☐ Fax : 24626727

Website : www.icsi.edu ☐ E-mail : info@icsi.edu

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PREFACE

We live in an interconnected world, and we all are becoming an integral part of a digital and knowledge society of India.

The use of information technology in corporate governance leads to enhanced efficiency, greater transparency and cost reduction. With the help of e-governance, services can be delivered at greater speed, accuracy and the interests of all stake-holders can be better protected. It is an effort to build SMART (Simple, Moral, Accountable, Responsive, and Transparent) organisations for the benefit of the stakeholders. If good governance is the end, e-governance is a means to achieve it.

In line with the above development, Companies Act, 2013 carries a number of provisions for utilization of technological advancements for reaching the unreached and in the process to bring about wider transparency and greater accountability.

This Handbook on e-governance, comprehensively captures all the provisions relating to e-governance in the Companies Act, 2013 and also the contribution of other regulators towards achievement of effective e-governance model.

I place on record my sincere thanks to Mr. V.K Agarwal, former Principal Director, ICSI for his valuable inputs in finalizing the Handbook.

I commend the dedicated efforts put in by team ICSI comprising CS Banu Dandona, Deputy Director, CS Deepa Khatri, Assistant Director, CS Disha Kant, Assistant Education Officer in the Directorate of Professional Development –II in preparing this publication under the overall guidance of CS Alka Kapoor, Joint Secretary and leadership of CS Sutanu Sinha, Chief Executive & Officiating Secretary.

I am sure the publication will prove to be of immense benefit to companies, stakeholders and professionals.

In any publication of this kind, there is always scope for further refinement. I would be personally grateful to the users and readers of this Handbook for their feedback.

(CS R Sridharan)

President

Place : New Delhi

Date : December 17, 2014

The Institute of Company Secretaries
of India

CONTENTS

INTRODUCTION	1
MCA 21: FIRST STEP TO E-GOVERNANCE IN CORPORATE WORLD	2
SERVICE OF DOCUMENTS THROUGH ELECTRONIC MODE	5
MAINTAINANCE OF RECORDS IN ELECTRONIC FORM	8
MEETINGS IN ELECTRONIC MODE	13
ELECTRONIC VOTING	24
OTHER E-GOVERNANCE RELATED MATTERS	40
E-GOVERNANCE AND THE ROLE OF SEBI	43
FAQS ON E-GOVERNANCE	46
ANNEXURE I	53
ANNEXURE II	69

E-Governance

Electronic Governance or E-Governance is basically effective and efficient utilization of the information technology and telecommunications in effectively monitoring the performance and functioning of an organisation. Such use of information and communication technologies can be at all levels of governance whether it is government, or a business corporation. According to UNESCO *“E-governance may be understood as the performance of this governance via the electronic medium in order to facilitate an efficient, speedy and transparent process of disseminating information to the public, and other agencies, and for performing government administration activities.”*

Electronic Governance is the application of Information Technology to the functioning of an organisation in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. It is a process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

The model of e-governance is adopted to obtain rapid information flow, enhanced efficiency of business activities, greater stakeholder satisfaction, more accountability and transparent corporate administration and management.

E-Governance in India has steadily evolved from computerization of Government Departments to adoption of the Electronic Governance in the corporate world. Government initiatives through e-governance include citizen centricity, policy changes, service orientation and transparency. Corporate world adopts e-governance in all its business-related and administrative activities. All kinds of managerial functions becomes more convenient, efficient, transparent, this certainly leads to better accountability and responsibility.

Role of E-Governance in Good Corporate Governance

The use of information technology in corporate governance leads to enhanced efficiency, greater transparency and cost reduction. With the help of e-governance, services can be delivered at greater speed and the interests of all stake-holders can be better protected.

E-Governance signifies the shift in the manner of interaction between the Government and those who are governed. It aims for improving efficiency and effectiveness of Governance by making the information available anywhere and anytime.

In order to ensure good corporate governance, it is necessary to ensure information integrity and prevent abuse/misuse use of information by those involved in the internal or external governance system of the companies. In this context, the use of information technology (IT) can be viewed as a real support.

Good corporate governance has five essential elements: fairness, transparency, accountability, responsibility, and independence. It is important that the companies' disclosures are timely, adequately, clearly, accurately and comparably, and it should be easy for the stakeholders to access. Keeping these in view, supporting tools for providing this information particularly in decision-making is obviously needed. Therefore, e-governance becomes one of the major factors to improve the good corporate governance and its controlling mechanisms.

MCA 21: First Step to E-Governance in Corporate World

In the past, the corporate reporting were characterized by large amounts of paper work, time consuming processes and complicated set of controls. But the increasing globalization necessitated creation of a favourable climate for encouraging sustainable economic growth and maintaining a healthy business eco-system.

The phenomenal growth of the corporate sector in India from around 30000 companies in the year 1956 to approximately 8,00,000 companies in last decade, is a symbol of improving delivery mechanism. Efficiently managing and monitoring of hefty paper filing prompted the launch of MCA 21 in 2006. MCA21 is the authentic information repository on the corporate sector and serves as the registry for all filings / public records. It has brought about transformational change in the corporate affairs. MCA21 has utilized

the possibilities offered by technology to simplify the interfaces between the Government and the stakeholders. The comprehensive, end-to-end service oriented solution has helped establish a fine balance between facilitation and compliance.

In the words of Dr. Manmohan Singh, the then Honourable Prime Minister of India, "E-Governance has the potential to transform governance and contribute to the reform of administration by enabling greater speed and efficiency in official transactions. The commissioning of the MCA-21 project is a landmark measure for advancing the cause of the national e-governance plan and implementing it."

E-filing

Significant changes were brought in by the introduction of MCA-21 Project. E-filing introduced a sea-change in the process of filing, storage and inspection of records of registered companies. Stakeholders now have easy access to vital data of companies enabling them to make informed decision.

E-filing was enabled by the Central Government with the amendment to Companies (Central Governments) General Rules and Forms 1956 vide Notification No. GSR 56(E) dated 10th February, 2006 and the notification of e-forms to enable electronic filing of documents.

Rule 3 of Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 provided that the forms prescribed in Annexure A of the Rules may be filed through electronic media or through any other computer readable media as referred under Section 610A of the Companies Act, 1956. MCA-21 was launched on 18th February 2006 by commencing the process of e-filing at ROC office at Coimbatore. The first company was incorporated by e-filing at Coimbatore.

Ministry of Corporate Affairs ('MCA') had notified the Companies (Electronic Filing and Authentication of Documents) Rules, 2006 w.e.f. 16.9.2006 vide notification number GSR 557(E) dated 14.9.2006. According to the said Rules, every e-form or application or document or declaration required to be filed or delivered under the Companies Act and rules made thereunder, shall be filed in computer readable electronic form, in portable document format (pdf) and authenticated

by a managing director, director or secretary or person specified in the Act for such purpose by the use of a valid digital signature.

Section 398 of the Companies Act, 2013 legislates provisions relating to filling of applications, documents inspection etc. in electronic form.

The filings of e-forms under Companies Act, 2013 can be done from the website of MCA viz. <http://www.mca.gov.in>

COMPANIES ACT, 2013 AND E-GOVERNANCE

The Companies Act, 2013 replacing six decade old Companies Act, 1956, has been enacted at a time when it was required the most to be at par with modern legislations elsewhere in the globe. It is a legislative document which calls for better transparency, disclosures, compliances, reporting, accountability and responsibility. The Act captures all the technological advancements which shall certainly increase the ease of doing business in India. Few provisions under the Act relating to Electronic Governance are as discussed in the forthcoming chapters.

Service of Documents through Electronic Mode

Prior to the enactment of Companies Act, 2013, the Ministry of Corporate Affairs (MCA) vide circular No.17/2011 dated 21.04.2011 and Circular No. 18/2011 dated 29.04.2011 towards Green Initiative permitted paperless communication by companies through electronic mode. Companies were permitted to send various notices /documents to its shareholders through electronic mode to the registered e-mail addresses of shareholders.

This circular actually meant that the documents like Notices of Meetings, Annual Reports, Directors' Report, Auditors' Report and all other shareholder communication may be sent electronically to the email address provided by shareholders and made available to the company by the Depositories. The circular clarified that service of documents in compliance with section 53 of the Companies Act, 1956 would be satisfied where the documents have been sent through electronic mode. Similarly, the company would be in compliance of section 219(1) of the Companies Act, 1956, in case, a copy of Balance Sheet etc., is sent by electronic mail to its members.

Similarly, Securities and Exchange Board of India (SEBI) in line with the green initiative of MCA amended the Equity Listing Agreement vide its Circular no. CIR/CFD/DIL/7/2011 dated October 5, 2011 to the effect that instead of supplying complete and full annual report to all the shareholders, the listed entities shall supply-

- (i) soft copies of full annual report to all those shareholders who have registered their e-mail addresses for the purpose,
- (ii) hard copy of abridged annual report to others and
- (iii) hard copies of full reports to those shareholders, who request for the same.

In continuation of these measures, the Companies Act, 2013 specifically under section 20 provides for service of documents through electronic mode.

Service of documents on the company

Subsection (1) of section 20 provides that a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by:

- registered post; or
- speed post; or
- courier service; or
- leaving it at its registered office; or
- means of such electronic or other mode as may be prescribed.

Service of documents by the company

The section has more specifically provided for the service of documents on the company and by the company. Sub-section(2) of section 20 provides that the a document may be served on Registrar or any member by sending it to him by

- post; or
- registered post; or
- speed post; or
- courier; or
- delivering at his office or address; or
- such electronic or other mode as may be prescribed.

According to rule 35 of the Companies (Incorporation) Rules, 2014, a document may be served on a company or an officer thereof/ served on the Registrar or any member through electronic transmission.

The term “electronic transmission” means a communication–

(a) delivered by –

- (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Company or its officer/ Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;

- (ii) posting of an electronic message board or network that the Company or its Officer/ Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting; or
- (iii) other means of electronic communication,
 - in respect of which the Company/Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and
- (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

Section 20 further provides that the member may request for delivery of any document through a particular mode. The member shall in such a case pay such fees as may be determined by the company in its annual general meeting.

Maintenance of Records in Electronic Form

In recent times, companies maintained book and paper including book of account, deeds, vouchers, writings, documents, and minutes and registers in physical form but under the Companies Act, 2013, it is permissible to maintain these documents in electronic mode to reduce the burden of huge paperwork and threat of loss by theft or fire or due to any uncertainty.

The Act clearly provides for maintaining of records in electronic form. Several definitions itself provide as to their maintenance in electronic mode.

Section 2(12) “book and paper” and “book or paper” to include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in **electronic form**;

Section 2(36) defines document to include summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in **electronic form**;

Section 2(74) defines “register of companies” so as to mean the register of companies maintained by the Registrar on paper **or in any electronic mode** under this Act;

(a) Maintenance of Books of Accounts in Electronic Form

Section 128 of the Act provides that every company shall prepare and keep at its registered office, books of account and other financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

The section specifically gives an option to the company to maintain such books of account or other relevant papers in electronic mode.

In the context of maintaining books of accounts in electronic mode, rule 3 of the Companies (Accounts) Rules, 2014 provides that the books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. These shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

The information received from branch offices periodically shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

The information maintained in the electronic record of the document shall be capable of being displayed in a legible form.

The Rules provide that there shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable unless permitted by law.

The retrieval of records and other information is important, hence the Rules provide that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

It is pertinent to note that sub-section (5) of section 128 provides that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order.

Where an investigation has been ordered in respect of the company, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-

- (a) the name of the service provider;

- (b) the internet protocol address of service provider;
- (c) the location of the service provider (wherever applicable);
- (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

(b) Maintenance and Inspection of Books and Records in Electronic form

Section 120 read with rule 27 of the Companies (Management and Administration) Rules, 2014 provides that every listed company or a company having not less than 1000 shareholders, debenture holders and other security holders, may maintain its records in **electronic form**.

As per Explanation to sub-rule (2), the term "records" for the purpose of this rule means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company. This clearly means that all kinds of registers including register of members may be maintained in electronic form.

The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit.

It is to be ensured that the

- (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made thereunder;
- (b) the information as required under the provisions of the Act or the rules made thereunder should be adequately recorded for future reference;
- (c) the records must be capable of being readable, retrievable and reproducible in printed form;
- (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;
- (e) the records, once dated and signed digitally, shall not be capable of being edited or altered;

- (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.

Security of Records maintained in Electronic Form

In the context of maintaining security of records maintained in electronic mode as per rule 28 of the Companies (Management and Administration) Rules, 2014, the following is to be ensured:

- The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.
- The person who is responsible for the maintenance and security of electronic records shall-
 - (a) provide adequate protection against unauthorized access, alteration or tampering of records;
 - (b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
 - (c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
 - (d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
 - (e) ensure that the computer systems can discern invalid and altered records;
 - (f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;
 - (g) ensure that the records are at all times capable of being retrieved to a readable and printable form;
 - (h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
 - (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records

kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
- (k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- (l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- (m) take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and copies of records maintained in Electronic Mode

For the purpose of inspection and copies of records maintained in electronic form **rule 29 of the Companies (Management and Administration) Rules, 2014** provides that where a company maintains its records in electronic form, any duty imposed by the Act or rules made thereunder to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding ten rupees per page.

Penal Provision

Rule 30 of the Companies (Management and Administration) Rules, 2014 provides the penalty for non-compliance with any of the provisions of the rule 29. It provides that the company and every officers or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

Meetings in Electronic Mode

At the point of time when technologies are converging and turning to become core competencies, adapting a mode which can give an opportunity for each one to participate in a meeting without being physically present becomes inevitable. The Companies Act, 2013 enables the convening and conduct of meetings through electronic mode.

Provisions under the Companies Act, 2013

The Act permits and enunciates the provisions relating to conducting of meetings through electronic means.

(a) Notice of Meetings through electronic mode

Section 173(3) relating to convening of board meeting provides that the Board meeting shall be called by giving not less than 7 days' notice which may be sent by hand delivery or by post or by electronic means.

Similarly according to section 101 general meeting may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in prescribed manner.

Rule 18 of the Companies (Management and Administration) Rules, 2014 provides that a company may give notice through electronic mode. The Electronic mode for the purpose has been defined so as to mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

The procedure and the measures to be adopted by the company to maintain authenticity of sending notice have been given in the aforesaid rule. Major points are:

- A notice may be sent through e-mail as a text or as an

attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

- The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company or as provided by the depository.
- The subject line in e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.
- A record of any failed transmissions of notices and subsequent re-sending shall be retained by or on behalf of the company as “proof of sending”.
- The Company shall not be held responsible for failure in transmission beyond its control.
- If the member does not provide an updated e-mail address, the company shall not be in default
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Central Government.

(b) Passing of Resolutions by Circulation

The Act also makes a provision for passing resolutions by circulation. According to section 175 read with rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014, a resolution in draft may be circulated to the directors, together with the necessary papers for seeking their approval by electronic means which may include E-mail or fax.

(c) Conduct of Board Meetings Through Video Conferencing

Many companies in India even before the legal mandate, as a practice, were conducting Board and committee meetings through video conferencing. However, the directors attending through video conferencing were not counted for the quorum.

Globally meeting of board through video conferencing or other audio visual means has been a recognised mode of convening and conducting meetings. Following are the extracts of legislative provisions on meetings through audio/video-conferencing adopted by various countries:

United States of America***Model Business Corporation Act 1984***

Section 8.20 on “Meetings” provides as under:

- (a) The Board of directors may hold regular or special meetings in or out of this State.
- (b) Unless the articles of incorporations or bylaws provide otherwise, the Board of directors may permit any or all directors to participate in a regular or a special meeting by, or conduct a meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Illinois Business Corporation Act of 1983

Section 8.15. quorum of directors

“(d) Unless specifically prohibited by the articles of incorporation or by-laws, members of the Board of directors or of any committee of the Board of directors may participate in and act at any meeting of such Board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating”.

Massachusetts Business Corporation Law

Section 8.20. Meetings

- “(a)The board of directors may hold regular or special meetings within or without the commonwealth.
- (c) Unless the articles of organization or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director

participating in a meeting by this means is considered to be present in person at the meeting.”

Texas Business Corporation Act

Art. 9.10. Actions Without a meeting: Telephone meetings

“C. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or by laws, shareholders, members of the Board of directors, or members of any committee designated by such Board, may participate in and hold a meeting of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened”.

Canada

Canada Business Corporations Act

S. 114(9), which reads as follows:

“Participation

(9) Subject to the by-laws, a director may, in accordance with the regulations, if any, and if all the directors of the corporation consent, participate in a meeting of directors or of a committee of directors by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A director participating in such a meeting by such means is deemed for the purposes of this Act to be present at that meeting.”

Ontario Business Corporation Act

Sub-section 126(13) - Meeting by telephone, etc.

“Unless the by-laws otherwise provide, if all the directors of a corporation present at or participating in the meeting consent, a meeting of directors or of a Committee of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to

communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed for the purposes of this Act to be present at that meeting”.

Mauritius

Mauritius Companies Act, 2001

Section 158

“Subject to the constitution of the company, the provisions set out in the Eight Schedule shall govern the proceedings of the Board.”

Clause 3 of the said Eight Schedule provides that a meeting of the Board could be held by means of audio or audio and visual communication, by which all directors participating and constituting quorum can simultaneously hear each other throughout the meeting.

Australia

Corporations Act, 2001

Section 248D Use of Technology

“A directors’ meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting”.

Legislative framework in India

Report of the Expert Committee on the new Company Law chaired by Dr. J J Irani recommended that the “Meetings of the Board of Directors by electronic means (Teleconferencing and video conferencing included) to be allowed and directors who participate through electronic means should be counted for attendance and form part of Quorum. Minutes should be approved/ accepted by such directors who attended by way of teleconferencing/ videoconferencing (Signature may be accepted by use of digital signature certification.) If any director has some reservation about the contents of the minutes, he may raise the issue in succeeding meeting and the dissent, if any, may be recorded in the minutes of that meeting.”

MCA under its Green initiative in the corporate governance, vide General Circulars No. 27/2011 and No. 28 of 2011 dated 20 May 2011 (“Circular”) allowed participation of shareholders and directors in a general meeting and board meeting through electronic mode.

Electronic mode for the purpose of these circulars was defined as “video conference facility i.e. audio-visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting”.

The Companies Act, 2013 allows the directors to attend Board meetings through video conferencing.

Section 173 of the Act provides that the every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

It has been further provided that the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 lays down the procedure which a company needs to comply with for convening and conducting of board meetings through video conferencing or audio-visual means.

“Video conferencing or other audio visual means” under the rule has been defined to mean audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Notice of such meeting

The notice sent to the directors under section 173(2) shall inform the directors regarding the option available to them to participate

through video conferencing or other audio visual means. Notice shall also include all the necessary information to enable the directors to participate through video conferencing or other audio visual means.

Matters that cannot be dealt through video conferencing or other audio- visual means

It is pertinent to note here that the Rules prescribe the matters that cannot be dealt through video conferencing or other audio- visual means. The following matters under rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 shall not be dealt with in any meeting held through video conferencing or other audio-visual means:

- the approval of the annual financial statements;
- the approval of the Board's report;
- the approval of the prospectus;
- the Audit Committee Meetings for consideration of financial statements including consolidated financial statements, if any, to be approved by the Board under section 134(1); and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Intimation by the Directors [Sub-rule 3(c)]

The director intending to participate through Video conferencing is required to intimate his intention to the Chairperson or the company secretary of the company. A director is expected to give prior intimation to that effect sufficiently in advance so that the company makes suitable arrangements in this regard.

Further where the director desires to participate through video conferencing, he may intimate his intention at the beginning of the calendar year and such intimation shall be valid for one year.

In the absence of any intimation by director of mode of attendance, it shall be assumed that the director shall attend the meeting in person.

Place of Meeting (Sub-rule 6 & 7)

The scheduled venue of the meeting as set forth in the notice of the meeting shall be deemed to be the place of the said meeting. All

recordings of the proceedings at the meeting shall be deemed to be made at such place.

All statutory registers shall be placed at the scheduled venue of the meeting. The registers where required shall be deemed to have been signed by the directors participating through electronic mode, only if they have given their consent to this effect and the same needs to be recorded in the minutes of the meeting.

Quorum (Sub-rule 5 Explanation)

A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum unless he is to be excluded for any items of business under any provisions of the Act or the rules.

The Chairperson shall ensure that the required quorum is present throughout the meeting.

Roll Call

At the commencement of the meeting, the chairperson shall take a roll call and every director participating through video conferencing shall state, for the record, the following :-

- (a) name;
- (b) the location from where he is participating;
- (c) that he has received the agenda and all the relevant material for the meeting; and
- (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting

After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

Identification & Voting (Sub- rule 8, 9 & 11(a))

The rules require that every participant shall identify himself for the record before speaking on any item of business on the agenda. If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson

or Company Secretary shall request for a repeat or reiteration by the Director.

In case the motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

Sitting Fees

According to section 197(5) of the Act, a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

This simply means that sitting fee is payable to a director who participates in meetings, either committee meetings or the board meetings. The board and committee meetings under the Act can be conducted using electronic mode, hence derivatively sitting fees is payable to a director who participates in a meetings through any of two modes viz. in person or through video conferencing or any other audio visual means.

Further rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that such sum (sitting fee) would be as may be decided by the Board of directors which shall not exceed one lakh rupees per meeting of the Board or the committee.

Recording of proceedings

The proceedings of the meeting are to be recorded either by way of the tape recording or other electronic recording mechanism.

Under these rules, it is the responsibility of the Chairperson and Company secretary to record proceedings and to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company. Hence, it is suggested that such recording should be duly authenticated by the Chairman, to avoid the possibility of tampering. Access to such recording may be allowed to all the directors.

In case where the recording gets corrupted before the recording of minutes, it is advisable that the company secretary continues to minute the proceedings at the meeting.

Minutes [Sub-rule 11(b), 12(a), (b) & (c)]

The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing.

The draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board.

Every director who attended such meeting, whether personally or through video conferencing shall confirm or give his comments in writing, about the accuracy of recording of the proceedings, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Role of the Chairperson and the Company Secretary

Role of the Chairperson and the Company Secretary with respect to Electronic meetings is specified in the sub-rule (2) which is as under:

The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care -

- a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- c) to record proceedings and prepare the minutes of the meeting;
- d) to store for safekeeping and marking the tape recording(s)

or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.

- e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

According to the proviso persons who are differently abled, may make request to the Board to allow a person to accompany him.

Secretarial Standard-1 on Meetings of the Board of Directors also contains the provisions for conducting of meetings through electronic mode. Section 118(10) of the Act mandatorily requires observance of the Secretarial Standard by the Companies. (Yet to be notified).

ENSURING CONFIDENTIALITY

In the case of meetings held through video-conferencing or other audio-visual means, ensuring secrecy and confidentiality of meetings assumes great importance. Directors should be requested to avoid any interruption or disturbance while participating and should not allow the presence of any other person at the location from which they so participate through video-conferencing or other audio-visual means except in case of persons who are differently abled. While identifying himself at the beginning of each meeting or on being introduced by the Chairman, each director should agree to maintain confidentiality.

The presence of technical persons should also be avoided as far as possible and the directors themselves should be equipped to operate the system.

The facilities of encryption and coding of data should be used as a measure against leakage of information or hacking of the system.

Electronic Voting

Meetings are perhaps the best practical expression of democratic form of corporate functioning. For the real owners of the organization i.e. the shareholders it is an opportunity for constructive dialogue between the management and shareholders. By 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.

E-voting is stated to be an internet based system through which shareholders can login and register their votes on companies' resolutions. It is expected to encourage greater participation of shareholders in decision making and may also reduce the cost borne by the shareholder to attend general meetings. Following are some of possible benefits of e-voting for the shareholder:

- Ability to take part in the decision making process in the comfort of their homes or offices.
- Ability to vote easily on any number of resolutions of any number of companies whose securities they hold and eligible to vote.
- Ease of voting - no pasting and posting.
- Ample time to vote till the last day.
- Less or no scope for invalid votes.

Electronic voting has been evolving in world over much of the past decade. Following are few legislative provisions in various countries.

European Union Regulations

Among the important legislative steps taken to enable shareholding voting by remote means was the European Union's

directive 2007/36/EC, dated 11th July 2007. This Directive mandated companies to allow general meetings via electronic means, and allow cross-border shareholders to vote. Note that cross-border voting was considered essential to a border-less economic community such as the European Union. Rule 9 of the Directive provided: "Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications."

Article 8 provides the detailed rules for electronic voting. It provides as follows:

Participation in the general meeting by electronic means

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:
 - (a) real-time transmission of the general meeting;
 - (b) real-time two-way communication enabling shareholders to address the general meeting from a remote location;
 - (c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.
2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.

United States of America

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

Canada Business Corporations Act (CBCA), amended in the year 2001, permits any person entitled to attend a meeting of shareholders to participate by means of telephonic, electronic or other communication facilities that permit all participants to adequately communicate with each. The corporation must provide the means of communication for participants. The CBCA also provides that a meeting may be held entirely electronically if authorized by the by-laws of the corporation.

United Kingdom

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

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.

India

On 21 August 2002, the Department of Company Affairs (DCA) under the Ministry of Finance and Company Affairs appointed a High Level Committee to examine various corporate governance issues. Chaired by Mr. Naresh Chandra, the Committee 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.

E-voting process has been introduced in Companies Act, 2013, in order to secure wider participation of shareholders in the important decisions of the company since postal method of voting has its own limitation.

Provisions under the Companies Act, 2013

Section 108 of the 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.

Securities and Exchange Board of India (vide circular no. CIR/

CFD/POLICY CELL/2/2014 dated April 17, 2014) has made facilitating e-voting mechanism for the investors, mandatory for all listed entities. The modalities are accordingly governed by the provisions of Companies (Management and Administration) Rules, 2014.

However, vide General Circular 20/2014 dated 17th June, 2014 the MCA while considering the some practical difficulties in respect of voting through electronic means and conduct 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 dealing with the exercise of right to vote by members by electronic means (e-means) as mandatory till 31st December, 2014. Hence it implies that the same shall be applicable from 1st January, 2015. SEBI in this case has clarified that inspite of deferment made by MCA, for listed companies SEBI provisions will prevail which means that for listed entities e-voting remains applicable.

Rule 20 of the Companies (Management and Administration) Rules, 2014 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.

Section 110 of the new Act incorporates the provision relating to

postal ballot. Section 2(65) of the Act defines “postal ballot” so as to mean voting by post or through any electronic mode; and section 2(93) of the act defines “voting right” so as to mean the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

Unlike the provisions of section 192A of the 1956 Act, section 110 is applicable to all companies, whether listed or unlisted. It has been made mandatory for a company to pass a resolution by postal ballot in respect of items notified by the central government and discretionary for the matters other than

- ordinary business and
- any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot.

The Companies (Management and Administration) Rules, 2014 provide that the provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to the rules of Postal Ballot, in respect of the voting by electronic means.

The procedural aspect of the e- voting process is covered under the Rules. Every company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system have to comply with the Rules.

Notice of such meeting [Rule 20(3)(i),(ii),(iii) &(iv)]

The notices of the meeting shall be sent to:

- all the members,
- auditors of the company,
- directors of the company

The notices may be sent through either:

- (a) by registered post or speed post ; or
- (b) through electronic means like registered e-mail id;
- (c) through courier service;

The notice is also required to be placed on the website of the company, if any.

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 [Sub-rule 3(vi), (vii) & (viii)]

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. All 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 [Sub-rule 3(v)]

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 (Sub-rule 3(ix), (x), (xi), (xii), (xiii), (xiv) & (xv))

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.

Bombay High Court Observation on E-Voting Provisions

Recently the 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 issues of legislative requirement of the E-voting concept. The gist of the judgement dated May 8, 2014 is as under:

- (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 have the effect of altogether 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 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.

E-Voting Procedure

E-voting is a common Internet Infrastructure that enables the investors to vote electronically on resolution of companies. Electronic voting replaces the postal ballot process and saves time and cost of the company. e-Voting is a mechanism through which security holders of companies can vote on resolutions electronically any-where and at any-time during the period of voting, through the electronic voting system developed by NSDL and CDSL Ventures Ltd (CVL). In case of e-voting, there is no physical collection and counting of postal ballot papers. Also, there is no need for verification of signatures of the shareholders who have exercised their votes.

NSDL/CDSL have already been providing e-voting services after their e-Voting system had received the Website Quality Certificate from the Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Government of India.

In order to solve the problems faced with the postal ballot, NSDL and CDSL have developed an internet based e-voting platform which enables shareholders to vote electronically in a convenient manner. 'User ID' and 'Password' are provided to the shareholders by the agency providing e-voting platform. In case of joint shareholding, e-voting option will be available only to the first shareholder. E-voting facility is available to shareholders holding shares in physical form as well as in demat form.

E-voting system records votes of the members / shareholders and provides data on the number of votes polled in favour or against a resolution proposed by the company. E-voting process is safe and maintains the confidentiality of the data.

Process of e-voting for a company

- A company desiring to use the e-Voting system has to sign the agreement and accept the terms and conditions for usage of the e-Voting system with NSDL/CDSL.
- The notice of the meeting should mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means.
- The company through its Register and Transfer Agent (RTA) will set up the e-voting schedule on its website. The company will upload the resolutions on which voting is required and generate an Electronic Voting Sequence Number (EVSN) / Electronic Voting Even Number (EVEN). The Company will upload the Register of Members.
- CDSL / NSDL will generate the password for each shareholder and print the same in a secured manner, which is to be sent to all the shareholders.
- The company will then communicate the password, EVSN / EVEN and the procedure for e-voting along with the notice of resolution to all the shareholders.
- At the end of the voting period, the portal where votes are cast will be blocked and no additional votes will be accepted by the company.
- After the voting period is over, a scrutiniser prepares a report of the votes cast in favour or against, if any, forthwith to the Chairman.

- A scrutiniser is an individual who monitors the entire process of e-voting. Appointed by the company, a scrutinizer, may be a practising chartered accountant, cost accountant, company secretary or an advocate. The scrutiniser scrutinizes the e-voting process in a fair and transparent manner.
- E-voting shall remain open for at least for one day and maximum for three days. In all such cases, such voting period should be completed three days prior to the date of the general meeting.

Process of e-voting for shareholders:

- The shareholders can login to the e-voting system using their user-id (i.e, demat account number / folio number), PAN and password.
 - After logging in, demat shareholders will have to confirm their personal details and compulsorily change their password. This password can be used by demat shareholders for voting on resolutions of any other company in which they are eligible to vote.
 - During the voting period, the shareholders can visit the e-voting website and select the relevant EVSN / EVEN / company for voting.
 - Shareholders can view the detailed resolutions on the website and cast their vote available for voting.
-

Other E-Governance Related Matters

Payment of dividend

The second Proviso to section 123(5) of the Act states that any dividend payable in cash may be paid by:

- cheque or
- warrant or
- in any electronic mode

to the shareholder entitled to the payment of the dividend.

This is a provision which diminishes the boundaries and the limitation of making payment by cheque or warrant. This will ensure direct and secured payment to the eligible shareholder.

Admissibility of certain documents as evidence

According to section 397 of the Act, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form and authenticated by Registrar shall be **admissible in any proceedings** there under without further proof or production of the original as evidence

Disclosures on Website

Due to the disclosure requirements for companies by the regulators, wide and indepth information is available to the stakeholders promptly, on real time basis. The resulting transparency allows the stakeholders to make an informed assessment of companies and enhances market confidence.

The Companies Act, 2013 nowhere mandates for companies to have a website of the company. On the other hand, Clause 54 of the Listing Agreement specifically requires the listed company to maintain a functional website containing basic information about the company e.g. details of its business, financial information, shareholding pattern, compliance with corporate governance, contact information of the designated officials of the company who

are responsible for assisting and handling investor grievances, details of agreements entered into with the media companies and/or their associates, etc. Further it is also required to ensure that the contents of such website are updated at any given point of time.

Certain disclosure provisions under Companies Act, 2013

— Section 13(8)

The section provides that a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company. The details with respect to such resolution is required to be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and **also be placed on the website of the company, if any**, indicating there in the justification for such change.

— Section 124(2)

The company requires that a company within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and **place it on the website of the company, if any**, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

— Section 135(4)

The Board of every company referred to in sub-section (1) shall after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it **on the company's website, if any**, in such manner as may be prescribed.

— Proviso 3 of Sub-section (1) of Section 136

A Listed company is required to place its financial statements

including consolidated financial statements, if any, and all other documents required to be attached thereto, **on its website**, which is maintained by or on behalf of the company:

Further every company having a subsidiary or subsidiaries are also required to place separate audited accounts in respect of each of its subsidiary **on its website, if any.**

— **Proviso 1 of Section 177(10)**

The details of establishment of the vigil mechanism under sub-section 177 (9) containing the adequate safeguards against victimisation of persons who use such mechanism is required to be disclosed by the company **on its website, if any**, and in the Board's report.

— **Section 230(3)**

Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1) of section 230, a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed.

It is further provided that such notice and other documents shall also be **placed on the website of the company**, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed.

— **SCHEDULE IV of Companies Act, 2013**

The terms and conditions of appointment of independent directors shall also be **posted on the company's website.**

E-Governance and the Role of SEBI

Securities Exchange Board of India (SEBI), the steadfast capital market regulator has been crucial in implementing corporate governance norms in the corporate sector. With the objective to protect the interests of investors in securities and to promote the development of and to regulate, the securities market and for matters connected therewith or incidental thereto SEBI has taken multitude of corporate governance measures through e-governance model for the benefit of stakeholders.

The Listing agreement and other regulations mandates listed companies to make periodic and event based disclosures to the stock exchanges thereby to the stakeholders. The listed companies, on real time basis, have to make disclosures with the respective stock exchanges on all such information which have bearing on the performance/ operations of the company. Such information is thereafter is available on the website of the Stock exchange where the stakeholders have easy access.

Listed companies are mandated to provide vast amount of information in the public domain through the website of stock exchange, including dates of Board Meetings, Decision of Board Meetings, Announcements pertaining to the Record date and Ex-date for the corporate actions like dividend, bonus, rights issue etc., Decision on corporate restructuring proposals at AGM /EGM, Buyback / Takeover / Delisting offers along with price, terms and other conditions, audited financial statements, auditors report, directors' report including future plans and prospects, and compliance report on the corporate governance and management discussion and analysis, Financial Results, Shareholding pattern, Change in shareholding of promoters / directors, Company operations relating to appointment / resignation / removal / death of key management personnel, variation between the utilisation of proceeds and profitability projected in the offer document against the actual, Information having bearing on performance / operations of the

company and or affecting the interests of equity and debtholders, signing contracts / delay in execution of contracts etc., which have impact on financial performance of the company, other company updates

Corp filing

SEBI credo that an “Educated investor is a protected investor”, Constant vigil by investors is a basic prerequisite for the efficient and effective functioning of capital markets in a disclosure based regime. Accordingly to empower investors, financials results of listed companies are available in the Corp Filing website. www.corpfiling.co.in is the common filing and dissemination portal for all companies listed on the BSE & the NSE. All SEBI /Stock Exchange related filing can be done through CorpFiling like:

- Company Results
- Corporate Announcements
- Company Factsheet
- Quarterly Compliance Report
- Share Holding Pattern
- Insider Trading

Redressal mechanism

The SEBI Complaints Redress System (SCORES) is a web-enabled system developed with an objective of providing an efficient and effective tool for facilitating monitoring and a speedy resolution of investor complaints/grievances, being received by various divisions of SEBI and other entities.

SCORES enables investors to lodge and follow up their complaints and track the status of redressal of such complaints online. This automated environment enables the market intermediaries and listed companies to receive the complaints online from investors, redress such complaints and report redressal online. All the activities starting from lodging of a complaint till its closure by SEBI is online and the complainant can view the status of his complaint online. SCORES helps generate need-based monitoring and query reports for effective monitoring of pending grievances at various levels. Action Taken report can be scanned and attached for onward transmission. E-

acknowledgement is sent over e-mail on registration of complaint. E-mail alerts are built-in for both the complainant and the entity concerned.

An investor, who is not familiar with SCORES or does not have access to SCORES, can lodge complaints in physical form at any of the offices of SEBI. Such complaints would be scanned and also uploaded in SCORES for processing.

Conclusion

With the recent emphasis on governance, the regulators have strengthened their oversight and monitoring mechanism in the form of more and more information sought for the sake of wider dissemination.

This compliance based governance at many instances leads to overlapping of filing the same information to various regulators.

This multiple filing causes a burden on the companies. The information given to one regulator may be transmitted to a repository which may be shared in between the regulators, hence reducing the cost of compliance and over reporting on the companies.

The implementation of the e-governance model should be such so as to benefit the regulators, the corporate as well as the investors. Once a single repository model is achieved the advantages derived would be much more.

FAQs on E-Governance

- 1. As per second proviso to section 128(1), companies may keep books of accounts in electronic form whereas rule 3 of the Companies (Accounts) Rules, 2014 requires companies to maintain books of accounts compulsorily in electronic form. Needs clarity.**

Second proviso to section 128 (1) provides that the company may keep the books of accounts or other relevant papers in electronic mode in the prescribed manner.

Rule 3 of the Companies (Accounts) Rules, 2014 provides the manner of keeping the books of account in electronic mode.

Therefore, the keeping of books of accounts in electronic mode is optional.

- 2. Is it mandatory for a company to keep its documents, records, registers, minutes, etc. in electronic form?**

According to Section 120, the documents, records, registers, minutes, etc. may be kept and inspected in electronic form. Rule 27 of Companies (Management and Administration) Rules, 2014 initially mandated every listed company or a company having not less than one thousand share holders, debenture holders and other security holders to maintain its records, as required to be maintained under the Act or rules made there under, in electronic form. However, MCA has revised the rules namely the Companies (Management and Administration) Second Amendment Rules, 2014, and amended rule 27 as follows:

- in rule 27, in sub-rule (1) and in the Explanation, for the word "shall", the word "may" shall be substituted.

Therefore, the companies have now been given an option to maintain the records in electronic form.

3. Is sitting fees payable to a director who participates in a meeting through video conferencing ?

Yes, sitting fee is payable to a director who participates in a meeting through any of two modes viz. in person or through video conferencing or any other audio visual means.

Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that such sum would be as may be decided by the Board of directors which shall not exceed one lakh rupees per meeting of the Board or the committee.

4. When a director joins the meeting by audio/video conference, (where he is counted for the purpose of quorum u/s 174), is it sufficient to say that director was not absent u/s 167(1)(b) even if he does not physically attend even a single Board meeting in a period of 12 months?

The requirement of section 167(1)(b) is only for attendance of a Director in the Board Meeting. It does not deal or regulate the manner of attending the Board Meeting. A Board Meeting attended by any Director, whether in person or through video conferencing or other audio visual means, shall be sufficient attendance for the purpose of section 167(1)(b).

5. How do directors participating in a meeting by video conferencing sign the attendance register?

The following provisions in the rules ensure the correct recording of the names of directors who are present through video conferencing:

Rule 3(4) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that at commencement of the meeting, a roll call shall be taken by the chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, inter-alia, name and location from where the director is participating.

Rule 3(11)(b) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the minutes shall disclose the particulars of the directors who attended the meeting

through video conferencing or other audio visual means.

The draft Secretarial Standard-1* provides that the attendance register shall be deemed to have been signed by the directors participating through video conferencing, if their attendance is recorded by the chairman or the company secretary in the attendance register and the minutes of the meeting.

6. Is there any restriction on a company for holding all Board Meetings abroad during the year?

Section 173 of Companies Act, 2013 does not restrict a company from holding any meeting of its Board of Directors at some other place outside India.

Further, as per Rule 3(6) of the Companies (Meetings of Board and its powers) Rules, 2014, with respect to meetings conducted through video conferencing or other audio visual means, provides that the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

7. Rule 4 of Companies (Meetings of Board and its Powers), Rules 2014 restricts the transaction of certain items of business through Video Conferencing.

If the number of directors personally present at such meeting form a quorum, can any director participate through video conferencing at the meeting.

As per draft Secretarial Standard-1*, any director may participate through video conferencing in respect of restricted items with the express permission of chairperson. He shall however, neither be entitled to vote nor be counted for the purpose of quorum in respect of such restricted items.

8. In respect of a meeting by Video Conferencing, due to some technical problem, the Video Recording which was done could not be retrieved. Is the meeting valid? What is the remedy?

Rule 3(2) of the Companies (Meetings of Board and its Powers) Rules, 2014 casts duty on chairperson of the meeting

and company secretary to take due and reasonable care to record proceedings and prepare the minutes of the meeting.

In case the video recording cannot be retrieved, the chairperson and company secretary should prepare the minutes on the basis of their notings and thereafter, seek confirmation of all the directors present personally or through video conferencing. As per rule 12(b) of the Companies (Meetings of Board and its Powers) Rules, 2014, every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

9. If a director of a company requests for participation in a meeting through video conferencing, is it mandatory for the company to provide the video conferencing facility, especially where all the other directors are participating in person?

As per the provisions of section 173 of Companies Act, 2013, the participation of directors may be either in person or through video conferencing or other audio visual means.

Thus, it is not mandatory for every company to provide the facility of participation through video conferencing.

Draft Secretarial Standard-1* also provides that any director may participate through electronic mode in a meeting, if the company provides such facility.

10. Please clarify the following with regard to video-conferencing:

- a. Whether Section 173 facilitates video conferencing for only Board Meeting or for Board as well as the Committees of the Board.
- b. Whether audio-video means audio including video OR it means audio or video.
- c. Whether any director present via video-conferencing will suffice the quorum requirement.

- a. The facility of video conferencing may be extended to committee meetings also. In case, the Committee meetings are held through video conferencing, the procedure provided in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, is required to be followed. However, rule 4 of Companies (Meetings of Board and its Powers), Rules 2014 restricts Meeting of Audit Committee by video conferencing for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act.
- b. As per the provisions of section 173 of the Companies Act, 2013, the participation of directors may be either in person or through video conferencing or other audio-visual means. As per explanation under rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, “video conferencing or other audio-visual means” means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.
- c. Yes, Directors present through video conferencing or other audio visual means would suffice for the quorum requirement as their presence shall be counted for the purposes of quorum.

11. Whether show of hands under section 107 is possible in case of companies which are covered under rule 20 of Companies (Management and Administration) Rules, 2014 relating to voting through electronic means?

Section 107 relating to voting by show of hands provides that 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 show of hands.

For all the transactions put to vote by electronic means by such companies, the provisions of section 107 become ineffective.

According to rule 20(1) of Companies (Management and Administration) Rules, 2014, 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.

Also, it has been clarified by the MCA vide General Circular 20/2014 dated 17th June, 2014 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.

Note : Referring to General Circular 20/2014 dated 17th June, 2014 the MCA while considering the 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 dealing with the exercise of right to vote by members by electronic means (e-means) as mandatory till 31st December, 2014.

12. Whether concept of demand for poll u/s 109 of the Companies Act, 2013 is relevant for companies covered under Rule 20 of Companies (Management and Administration) Rules, 2014 relating to voting through electronic means.

The Ministry of Corporate Affairs has vide General Circular 20/2014 dated 17th June, 2014 clarified that for companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, 2014, the provisions relating to demand for poll would not be relevant.

13. Whether a person who has voted through e-voting facility provided by the company can participate in general meeting? Further, can he change his vote?

It has been clarified by MCA vide General Circular 20/2014 dated 17th June, 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.

Therefore, a member of the company who has voted through electronic means may attend the general meeting and participate in the deliberations, though in accordance with the section 108 and Rule 20 of Companies (Management and Administration) Rules, 2014, the member is not allowed to change his vote once casted.

14. Whether concept of proxy is relevant in respect of a general meeting wherein e-voting facility has been provided to the members.

Proxy is a facility given to a member 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, any member who has not exercised his vote electronically, may attend and vote at the general meeting either personally or by appointing a proxy to attend and vote on his behalf. The concept of proxy is still relevant, though with limited applicability.

15. Whether the provisions of quorum under section 103 requiring specified persons to be physically present need to be complied with even in cases where electronic voting is mandated.

Section 103 requires the personal presence of specified number of members in case of public and private companies for valid conduct of general meetings.

Personal presence of specified number of persons is, therefore, mandatory in all general meetings even though the resolutions have been put to vote by electronic means before the meeting. It may be added that members who have voted by electronic means have a right to attend the general meeting and their presence shall be counted for the purposes of quorum.

**Relevant extract of Rules under Companies Act, 2013
Rule 35 of the Companies (Incorporation) Rules, 2014
(Pertaining to Section 20)**

Service of documents (Rule 35)

- (1) A document may be served on a company or an officer thereof through electronic transmission.
- (2) For the purposes of sub-rule (1), the term, “electronic transmission” means a communication—
 - (a) delivered by —
 - (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;
 - (ii) posting of an electronic message board or network that the company or the officer has designated for such communications, and which transmission shall be validly delivered upon the posting; or
 - (iii) other means of electronic communication, in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission; and
 - (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
- (3) A document may be served on the Registrar or any member through electronic transmission.

- (4) For the purposes of sub-rule (3), the term, “electronic transmission” means a communication –
- (a) delivered by –
 - (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;
 - (ii) posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting; or
 - (iii) other means of electronic communication, in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and
 - (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
- (5) For the purposes of sub-section (1) and (2) of section 20, “courier” means a document sent through a courier which provides proof of delivery.
- (6) In case of delivery by post, such service shall be deemed to have been effected- (i) in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted; and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

**Rule 20 of the Companies (Management and Administration)
Rules, 2014 (Pertaining to Section 108)**

Voting through electronic means (Rule 20)

- (1) 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.
- (2) A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system in accordance with the provisions of this rule.

Explanation.- For the purposes of this rule.-

- (i) the expressions “voting by electronic means” or “electronic voting system” means 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’;
- (ii) the expression “secured system” 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.
- (iii) the expression “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.

- (3) A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure, namely;
- (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 e-mail id;
 - (c) through courier service;
 - (ii) the notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members;
 - (iii) 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;
 - (iv) the notice shall clearly 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;
 - (v) the company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, 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, 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 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;
- (vi) the e-voting shall remain open for not less than one day and not more than three days:

Provided that 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:

Provided that 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 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:

Provided that 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;

- (x) the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;
- (xi) the scrutinizer shall, 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, forthwith to the Chairman;
- (xii) the scrutinizer shall maintain a register either manually or electronically to record the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;
- (xiii) 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.
- (xiv) 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;
- (xv) subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

Rules 27, 28, 29 and 30 of the Companies (Management and Administration) Rules, 2014 (Pertaining to Section 120)

Maintenance and inspection of document in electronic form (Rule 27)

- (1) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data shall be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

- (2) The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit,

Provided that -

- (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;
- (b) the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;
- (c) the records must be capable of being readable, retrievable and reproducible in printed form;
- (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;
- (e) the records, once dated and signed digitally, shall not be capable of being edited or altered;
- (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under,

and the date of updating shall be capable of being recorded on every updating.

Explanation: - For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

Security of records maintained in electronic form (Rule 28)

- (1) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.
- (2) The person who is responsible for the maintenance and security of electronic records shall-
 - (a) provide adequate protection against unauthorized access, alteration or tampering of records;
 - (b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
 - (c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
 - (d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
 - (e) ensure that the computer systems can discern invalid and altered records;
 - (f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;
 - (g) ensure that the records are at all times capable of being retrieved to a readable and printable form;
 - (h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
 - (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records

kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
- (k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- (l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- (m) take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and copies of records maintained in electronic form (Rule 29)

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made thereunder to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding ten rupees per page.

Penalty (Rule 30)

If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

**Rules 3 and 4 of the Companies (Accounts) Rules, 2014
(Pertaining to Section 128)**

**Manner of books of account to be kept in electronic mode
(Rule 3)**

- (1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
- (2) The books of account and other relevant books and papers referred to in sub-rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.
- (3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.
- (4) The information in the electronic record of the document shall be capable of being displayed in a legible form.
- (5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law:

Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

- (6) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-
 - (a) the name of the service provider;
 - (b) the internet protocol address of service provider;
 - (c) the location of the service provider (wherever applicable);
 - (d) where the books of account and other books and papers

are maintained on cloud, such address as provided by the service provider.

Explanation.- For the purposes of this rule, the expression "electronic mode" includes "electronic form" as defined in clause (r) of sub-section (1) of section 2 of Information Technology Act, 2000 (21 of 2000) and also includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) and "books of account " shall have the meaning assigned to it under the Act.

Conditions regarding maintenance and inspection of certain financial information by directors (Rule 4)

- (1) The summarised returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.
- (2) Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought.
- (3) The company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.
- (4) The financial information required under sub-rules (2) and (3) shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

Rule 3 and 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 (Pertaining to Section 173)

Meetings of Board through video conferencing or other audio visual means (Rule 3)

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

- (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
- (2) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care-
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorized participants at the Board meeting;
 - (c) to record proceedings and prepare the minutes of the meeting;
 - (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
 - (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
 - (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting:

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

- (3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
- (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
- (c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
- (d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
- (e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
- (f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.
- (4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-
- (a) name;
- (b) the location from where he is participating;
- (c) that he has received the agenda and all the relevant material for the meeting; and
- (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

- (5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

Explanation.- A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

- (b) The Chairperson shall ensure that the required quorum is present throughout the meeting.
- (6) With respect to every meeting conducted through video conferencing or other audio visual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
- (7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
- (8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
- (b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.
- (9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

- (10) From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
- (11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.
- (b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- (12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
- (b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
- (c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation.-For the purposes of this rule, "video conferencing or other audio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Matters not to be dealt with in a meeting through video conferencing or other audio visual means (Rule 4)

- (1) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-
 - (i) the approval of the annual financial statements;
 - (ii) the approval of the Board's report;
 - (iii) the approval of the prospectus;
 - (iv) the Audit Committee Meetings for consideration of accounts; and
 - (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

**MCA Clarification with regard to voting
through electronic means**

General Circular No. 20/2014

No. 1/34/2013-CL-V

Government of India

Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan

Dr R.P. Road, New Delhi

Dated : 17th June, 2014

To

All Regional Directors,
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. Corporate 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

(KMS Narayanan)
Assistant Director
23387263

Copy to:-

1. e Governance Section arld Web Contents Officer to place this circular on the Ministry's website
2. Guard File

Clarifications on issues relating to 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(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.
- (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 108 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.

References

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 2. Beginners Guide- Share and Debenture holders (<http://investor.sebi.gov.in/Reference%20Material/sharedebentureholder.pdf>).
 3. FAQs on the Companies Act, 2013 – ICSI Publications.
 4. Ensuring better corporate governance through E-governance. Shinu Vig, International Journal of Marketing, Financial Services & Management Research Vol.1 Issue 9, September 2012, ISSN 2277 3622.
 5. Getting to grips with e-Voting in General Meetings- Vinod Kothari, Chartered Secretary - July, 2014.
 6. Consultative Paper on meetings of the Board of Directors through Tele/Video-Conferencing-September-ICSI Publications, September 2003.
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