

## Insight into Electronic Voting in Company meetings under Indian Corporate Laws

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**Abstract:** E-Voting in Companies means a facility given to the members to cast their votes on the resolutions of the company through secure electronic mode. The e-voting in Indian companies was first introduced in the year 2001 for postal ballot resolutions through section 192A of the erstwhile Companies Act, 1956. Thereafter The Companies Act, 2013 introduced a separate provision which mandates the prescribed companies to mandatorily provide e-voting facility to the members. E-voting is an innovative facility which enables the members to take part in the decision making process of the company irrespective of their place of residence and without physically attending the meeting. It reduces the cost, paperwork and facilitates early declaration of results. However, there may be chances of misuse of shareholders data which is to be taken care of specially.

**Keywords:** Securities and Exchange Board of India, Ministry of Corporate Affairs, Articles of Association (AoA), Stock Exchange, Electronic Voting (e-voting).

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### I. Introduction

Company meetings provide an opportunity to the shareholders for dialogue with the management and is an expression of democratic form of corporate management. The shareholders being the owners, have right to participate in decision making processes by casting their vote in the interest of the company. The facility of voting by electronic means provides an opportunity to the members of a company to cast their votes on the resolutions through electronic mode. It is an internet system that enables the investors to vote electronically on resolutions proposed by the companies. It provides an option to shareholders residing in distant or remote areas to take part in the decision making processes of the company. E-Voting facility encourages corporate democracy and promotes good corporate governance.

Electronic voting has been developing in world for quite a time. Apart from various developed nations like United Kingdom & United States of America, there are various places that have embraced or are in the process of using e-voting such as China, Japan, Korea, Switzerland, Taiwan, Pakistan, Turkey, New Zealand, Malaysia etc.

### II. Legal framework in India

#### 1.1 Erstwhile Companies Act, 1956:-

Shareholders of a Company express their assent or dissent for the resolutions requiring their approval by way of voting. To take part in the decision making, the shareholders had to attend the meeting physically to cast their vote either by way of show of hands or take part in a poll conducted in a meeting. It was impossible for all shareholders of the company to be present physically for every general meeting leading to minimal shareholder participation. In order to improve the shareholder participation in the decision making processes and enhance the corporate governance, Ministry of Corporate Affairs, Government of India introduced "Passing of Resolutions by Postal Ballot" by inserting Section 192A in the erstwhile Companies Act, 1956 along with The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001.

The passing of resolutions through postal ballot was applicable to Listed Public Companies in case of certain prescribed businesses, such as, to alter the Objects Clause of AoA, Buy Back of Company's own securities, issue of shares with differential voting rights, change in the place of registered office of the company outside local limits of town, city etc., election of director representing small shareholders, sale of undertaking in whole or substantially whole, etc.

**1.2 The Companies Act, 2013:-**

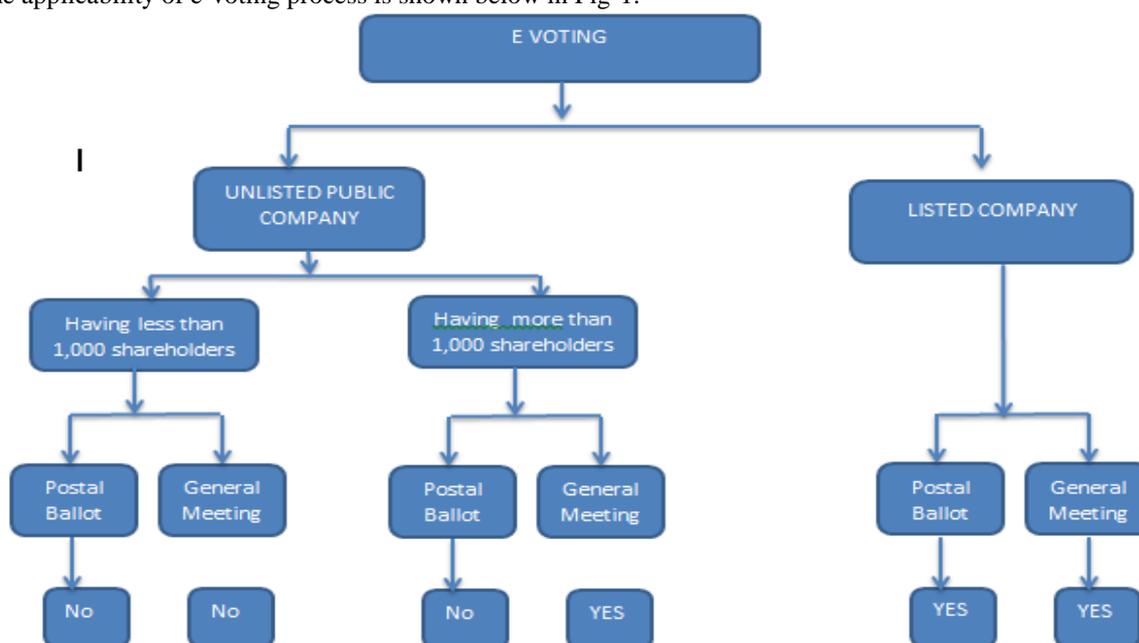
Now the Companies Act, 2013 has introduced new provision, voting through electronic means under Section 108 read with Companies (Management and Administration) Rules, 2014/ Rule 20 of the Companies (Management and Administration) Amendment Rules, 2015.

The electronic voting under The Companies Act, 2013 is applicable in respect of General Meetings to Company having at least One Thousand Members and to every Listed Company other than the companies referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (issue of Capital and Disclosure Requirements) Regulations' 2009.

**1.3 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:-**

The Regulation 44 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, governs the electronic voting by listed entities in India and provides that an entity listed on a recognized stock exchange shall provide an e-voting facility to its shareholders, in respect of all shareholders' resolutions and submit details regarding the voting results to the stock exchange, within forty eight hours of conclusion of its General Meeting,

The applicability of e-voting process is shown below in Fig-1.



**Fig. - 1**

**2. Procedural aspects of E-Voting:**

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

A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure:-

- First of all a notice of the meeting is to be sent to all the members, auditors of the company, and placed on the website of the company, if any and of the agency forthwith after it is sent to the members. The notice of the meeting shall clearly mention about the electronic voting facility to be provided by the company and the time schedule during which the votes may be cast.
- After dispatch of notices, an advertisement about the dispatch of notices is to be published at least twenty-one days before the date of meeting at least once in a vernacular newspaper of the company's and in at least

one English newspaper having a wide circulation in that district and specifying all the details laid down in Rule 20 of above said rules.

- The e-voting remain open for at least three days and shall close at 5.00 p.m. on the preceding date of general meeting.
- The members of the company may choose for e-voting during the period when facility for remote e-voting is provided. Once the vote is cast by the member, he is not allowed to change it subsequently or cast the vote again.
- The Board of Directors of the Company is required to appoint one or more Scrutinizers preferably a Company Secretary in practice or, a Chartered Accountant in practice, or Cost Accountant in practice, or an Advocate.
- After the conclusion of voting the Scrutinizer, first count the votes cast at the meeting, and then unblock the votes cast through e-voting in the presence of at least two witnesses who shall not be in the employment of the company. The Scrutinizer is required to prepare a Report of the total votes cast in favour or against, if any within three to the Chairman or an authorised person who shall countersign the same. The Chairman or an authorised person thereafter declares the result of the voting.
- The declared results along with the Scrutinizer's Report is required to be placed on the website of the company, and on the website of the agency immediately after the result is declared by the Chairman.
- The Listed entities are required to send the results to the concerned stock exchange(s) where its securities are listed.
- The resolution is deemed to be passed on the date of the relevant general meeting.
- A resolution proposed to be considered through voting by electronic means cannot be withdrawn.

### 3. E-voting platform service Agencies:

Following are some of the agencies authorized by Ministry of Corporate Affairs, Government of India which have developed an internet based e-voting platform that enables the shareholders to vote electronically in a convenient manner.

Name of the Agency	Website	Email ID
NSDL	<a href="http://www.evoting.nsd.com">www.evoting.nsd.com</a>	<a href="mailto:helpdesk@nsdl.co.in">helpdesk@nsdl.co.in</a> <a href="mailto:evoting@nsdl.co.in">evoting@nsdl.co.in</a>
CDSL ventures ltd (CVL)	<a href="http://www.evotingindia.com">www.evotingindia.com</a>	<a href="mailto:helpdesk.evoting@cdslindia.com">helpdesk.evoting@cdslindia.com</a>
Karvy Computershare Private Limited	<a href="http://www.evoting.karvy.com">www.evoting.karvy.com</a>	<a href="mailto:subrahmanyam.mrv@karvy.com">subrahmanyam.mrv@karvy.com</a>

### 4. Process of E-Voting:

- A company intending to use the e-voting system has to enter into an agreement and accept the terms and conditions for usage of the e-voting system with the vendor certified by Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India.
- The Company is required to issue a notice as per Rule 20 of the Companies (Management and Administration) Amendment Rules, 2015, mentioning that the business may be transacted through electronic voting system and the company is providing facility for the same.
- The company shall then set up the e-voting schedule on its website and upload the resolutions on which voting is required and generate EVSN /EVEN /Password and print in a secured manner.
- The password along with EVSN /EVEN and the procedure for e-voting along with the notice of resolution is then sent to all the shareholders.
- The voting is opened as per the schedule and the shareholders desiring to use e-voting system cast their votes on the basis of above credentials supplied to them by the company. E-voting remains open for at least three days and closes at 5.00 p.m. on the preceding date of general meeting.
- Once the voting period elapses, the e-voting portal is blocked and no votes are accepted by the company. Thereafter, a Scrutinizer prepares a report of the votes cast in favour or against, if any, and forwards it to the Chairman who countersigns it.
- The detailed resolutions may be viewed by the shareholders on the website.

### 5. Regulatory clarifications on the E-voting Process.

- The voting by way of Show of Hands is not permissible in case of e-voting and demand for poll is not relevant.
- A person who has availed the online e-voting portal is not allowed to physically vote in the meeting. However he may take part in the meeting.
- In case of e-voting, the voting is based on the number of shares held, i.e there is principle of "On Share-One Vote" and not "One Person -One Vote"

- Any person who has neither availed e-voting system nor physically participated in the meeting, he/she shall not be given the facility to cast vote through postal ballot.
- If any entity which is not mandatorily required to provide e-voting facility to the members, but voluntarily provides for the same, then it is required to follow the entire procedure laid down in the legal provisions.

### **III. Conclusion**

Electronic Voting is a system or facility alternative to the ballot process to provide members an option to cast votes in electronic form through the online system without physically attending the meeting. The shareholders can vote on resolutions of companies from anywhere and at any time with the help of simple portal. The system records and processes the votes automatically and facilitates and ensures early declaration of voting results.

In the e-voting process, role of scrutinizer has gone under paradigm shift as there are no physical collection and counting of ballot papers, verification of signatures and rejection of invalid votes. The main responsibility is on the part of scrutinizer who should take care of the e-voting process.

E-Voting is an innovative system with numerous advantages some of which are highlighted below:

- Reduction in cost and paperwork.
  - No need to store physical ballot papers.
  - Accurate counting of votes.
  - Declaration of results in a very short time.
  - No need to verify the signatures.
  - Invalid votes cannot be casted and also votes won't be lost in transit.
  - Voting can be done from anywhere.
  - Sufficient time will be available for voting as it can be casted even on the last day.
  - Voting can be done for different companies at the same time.
  - Increase of transparency
  - Increase of participation in the decision making process.
- Despite the above merits, the Companies may face some demerits too viz:
- There may be a chance of misuse of user credentials such as a User ID and Password, if it falls into wrong hands.
  - Lack of awareness among the shareholders about the new process of e-voting
  - It has to be ensured that the entire process of e-voting is not subject to any kind of manipulation.
  - Correct Data of Shareholders will have to be provided by the Registrar and Share Transfer Agents or the Company to the agency providing e-voting platform otherwise a shareholder may not get his User ID and Password and thus may not be able to cast his vote.
  - There is no option of modification of the casted vote.

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