

## Voting through electronic means (Sec 108) – Part-1

### 1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 108-This is a new clause and it provides that a member in the prescribed class of companies may exercise his right to vote by electronic means.”

The shareholders now have an option to cast their vote electronically which was not available at regime of Companies Act, 1956. The intention is to provide the shareholders an opportunity to exercise his right to vote by the electronic means on the resolutions placed before the general meeting of a company without even being present at the same.

### 2. Voting by electronic means

Voting by electronic means or E-voting is an additional tool available in the hands of all the shareholders of such class of companies besides the other ways in which one can vote. In other words, right to attend the general meeting or vote by poll and also vote other electronic modes provided by the company at general meeting continues to be available with the shareholders besides remote e-voting option.

Further as per para 7.2.2 of SS-2, every company which provides e-voting facility to its member is also required to put every resolution to vote through a ballot process (including voting electronic through computer or secured electronic systems) at the meeting to enable those members who have not exercised remote e-voting, to vote.

Any member, who has already exercised his votes through remote e-voting, may attend the meeting but is prohibited to vote at the meeting and his vote, if any, cast at the meeting shall be treated as invalid.

A proxy can vote in the manner provided at the meeting.

The e-voting provides opportunity for larger participation in voting process. However it deprives the shareholders for discussion or deliberation on the agendas before voting. E-voting is applicable to ordinary as well as special businesses to be transacted under Section 102 at the Annual General Meeting. The purpose of conducting of annual general meeting is to provide an opportunity to shareholders to discuss on the performance and prospects of the company with directors of the company. Due to the mandate of e-voting process, the purpose of annual general meeting is defeated. There may be a situation where shareholders exercise 100% voting through e-voting, the meeting is a mere formality. The discussions and deliberations even if taken place at Annual General Meeting do not yield any result as it used to be there in the regime of Companies Act 1956.

While dismissing case National Textile Corporation (UP) Ltd vs Swadeshi Polytex Ltd And Ors. (1998 92 Comp Cas 315 CLB) the Honorable Company Law Board emphasized as “The annual general meeting is an opportunity to take stock of the affairs of the company and carry out certain routine business.”

In re. Godrej Industries Limited (2014), honorable judge G.S. Patel of Bombay High Court observed the importance of discussions and deliberations at general meeting of members:

“We must remember that at the heart of corporate governance lies transparency and a well-established principle of indoor democracy that gives shareholders qualified, yet definite and vital rights in matters relating to the functioning of the company in which they hold equity. Principal among these, to my mind, is not merely a right to vote on any particular item of business, so much as the right to use the vote as an expression of an informed decision. That necessarily means that the shareholder has an inalienable right to ask questions, seek clarifications and receive responses before he decides which way he will vote. It may often happen that a shareholder is undecided on any particular item of business. At a meeting of shareholders, he may, on hearing a fellow shareholder who raises a question, or on hearing an explanation from a director, finally make up his mind. In other cases, he may hold strong views and may desire to convince others of his convictions. This may be in relation to matters that are not immediately obvious to the shareholder merely on receipt of written information or a notice. The right to persuade and the right to be persuaded are, as I see it, of vital importance. In an effort for greater inclusiveness, these rights cannot be altogether defenestrated. To say, therefore, that no meeting is required and that the shareholder must cast his vote only on the basis of the information that has been send to him by post or email seems to me to be completely contrary to the legislative intent and spirit to the express”

### 3. Classes of companies covered under e-voting

The section empowers the Central Government to prescribe the manner of e-voting and the class of companies which are required to provide the facility of voting by electronic means to its members. Rule 20 of Companies (Management and Administration) Rules, 2014 specifies that every company having its equity shares listed on a recognised stock exchange other than a company referred to in Chapter XB (Having equity Listed on SME Stock Exchanges) or Chapter XC (Having equity Listed on Institutional Trading Platform) of the SEBI (ICDR) Regulations, 2009 or a company having not less than 1,000 members shall provide the right to the members of voting through electronic means. Based on the emphasis of equity used in the rule, one may understand that here members mean equity shareholders not preferential shareholders. In other words, it appears that the providing e-voting facility is not applicable to the resolutions passed by the debentures holders or preference shareholders.

The above classes of companies are required to provide for e-voting facility to its shareholders on all the business items which are to be transacted at the general meeting.

#### 4. Salient features of e-voting process

- a) 'Voting by electronic' means includes 'remote e-voting' and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting.
- b) The agency is to be appointed for the purpose of providing, assisting and supervising the e-voting process.
- c) The cut-off date for determining the members who are entitled to vote through Remote e-voting or voting at the general meeting shall be a date not earlier than seven days prior to the date fixed for the general meeting. Only those members as on the cut-off date, who have not exercised their Voting Rights through Remote e-voting, shall be entitled to vote at the Meeting.
- d) The company is required to conduct Board Meeting to appoint a scrutinizer, who can conduct the e-voting or/and ballot process in a fair and transparent manner.
- e) The notice of the general meeting is required to be sent to all the members, directors and auditors of the company by registered post or speed post or courier service or through electronic means to the registered e-mail IDs of the recipients.
- f) The advertisement in the form of public notice before 21 days of the date of the general meeting, containing the brief particulars of business to be transacted at the meeting and e-voting process is required to be published in the news paper. It is to be posted on the website of the company and of the agency.
- g) The facility of remote e-voting does not dispense with the requirement of holding a General Meeting by the company.
- h) Once a resolution proposed to be considered through e-voting it is not permissible to withdraw.
- i) It is not mandatory for every shareholder to opt for e-voting facility.
- j) It is mandatory for the prescribed class of Companies to provide e-voting facility for all resolutions to be passed at general meeting.
- k) Voting by show of hands and Demand for poll are not allowed where e-voting facility is provided.

- l) The members are allowed to attend the meeting who have cast their votes through remote e-voting
- m) Once the member cast his remote e-voting facility, he is not allowed vote subsequently.
- n) In case of postal ballot, e-voting if provided by the company can be exercised by the shareholders instead of postal ballot.
- o) The scrutinizer who is appointed is required to maintain the register either in physical or electronic form and all the necessary papers to be in his safe custody.
- p) The Scrutinizer is required to submit the consolidated scrutinizer's report after the conclusion of the meeting.
- q) The scrutinizer (s) is required to submit his report within a period of three days from the date of the meeting.
- r) The Chairman or any other director so authorized shall countersign the scrutiniser's report so received.
- s) The resolution is deemed to be passed subject to the requisite majority of number of votes.

## 5. Appoint an Agency

Agency means the National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to the condition that the National Securities Depository Limited, the Central Depository Services (India)Limited or such other entity has obtained a certificate from the standardization Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications and information Technology, Government of India including with regard to compliance with parameters relating to secured system. The agency shall be appointed for providing and supervising the electronic platform for voting.

*(to be continued...)*

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*