POSTAL BALLOT AS PER COMPANIES ACT 2013

Earlier (as per companies Act, 1956) only listed companies were require to pass resolution through postal ballot.

However companies Act 2013 compel all companies whether listed or unlisted, public or private to transact some specified business only through postal ballot.

WHAT IS POSTAL BALLOT?

"postal ballot" means voting by post or through any electronic mode"

Sub section -(*65*) of section 2

WHICH COMPANIES ARE REQUIRED TO TRANSACT BUSINESS THROUGH POSTAL BALLOT?

All companies except one person company and Companies having upto 200 members.

LIST OF BUSINESS NEED TO BE TRANSACTED ONLY THROUGH POSTAL BALLOT

As per sub Rule 16 of Rule 22 of Companies (Management and Administration) Rules 2014, following items of business shall be transacted only by means of voting through a postal ballot-

a) Alteration of the objects clause of the Memorandum and in the case of the Company in existence immediately before the commencement of the Act, alteration of the main objects of the Memorandum;

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

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

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

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

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

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

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

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

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

A company may transact any other business by postal ballot instead of transacting at general meeting except;

- Ordinary businesses 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

If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

PROCEDURE OF POSTAL BALLOT

A. APPOINTMENT OF SCRUTINIZER

The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority

B. DISPATCH NOTICE TO SHAREHOLDERS

A notice shall be sent to shareholders along with draft resolution explaining the reasons therefore and requesting them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of dispatch of the notice.

The notice can be sent through any of the following mode

- Registered Post
- Speed Post
- Courier services
- Electronic mean i.e. registered e-mail ids

Copy of notice is as below

- http://www.visaka.biz/VISAKAINDUSTRIESLIMITEDPOSTALBALLOTNOTICE.pdf

C. ADVERTISEMENT IN NEWSPAPERS

An advertisement shall be published 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 dispatched the ballot papers and specifying therein, inter alia, the following matters, namely

- a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;

- the date of completion of dispatch of notices;

- the date of commencement of voting;

- the date of end of voting;

- the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;

- a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and

- contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

D. PLACE NOTICE ON THE WEBSITE OF THE COMPANY

The notice of the postal ballot shall also be placed on the website of the company immediately after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members

E. VOTING THROUGH BALLOT PAPER OR ELECTRONICALLY

If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf

The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.

The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf.

The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means.

F. SCRUTINIZER'S REPORT

The scrutinizer shall submit his **report as soon as possible** after the last date of receipt of postal ballots **but not later than seven days thereof;**

The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company

G. OTHER PROVISIONS

Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.

The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely

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