

METHOD OF VOTING AT GENERAL MEETINGS

INTRODUCTION

The votes cast by the shareholders play a decisive role in the business proposed in General Meetings of a Company. An equity shareholder has the right to vote for every motion. However, as per the Section 47 of the Companies Act, 2013, a preference shareholder is entitled to vote only for a resolution pertaining to his rights.

With the dawn of the new law governing Companies which strives to shareholder activism, there are different options for a shareholder to vote on resolutions to be passed at General Meetings of the Company or in fact, in case of e-voting, have his say without actually being present at the meeting!

Shareholders' wider participation is giving real heat to the corporates. Recently, Tata undoubtedly India's one of the biggest conglomerates had a bitter taste of it, when postal ballot resolutions paying remuneration to executive directors of Tata Motors failed. Around 64% of institutional investors and 41% of public shareholders have voted against the resolution.

In this article, unless otherwise expressly provided all sections referred to are of Companies Act, 2013 and rules referred to are of Companies (Management and Administration) Rules, 2014.



METHOD OF VOTING

The various modes through which a shareholder can cast his vote are mentioned below:-

❖ By attending the General Meeting:-

1. Show of Hands

As per Section 107, 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 a show of hands.

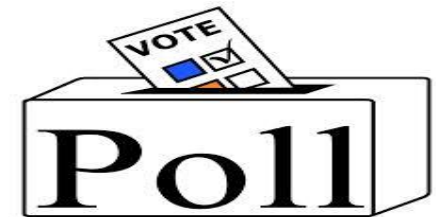


Further, through MCA's General Circular no. 20/2014 dated 17/06/2014, it has been precisely clarified that in case of Companies falling under Section 108 read with rule 20 (voting by electronic means), provisions of Section 107 (voting by show of hands) will not apply.

2. Poll

As per Section 109 a poll may be demanded by such number of members holding, shares worth minimum value of Rs. Five Lakh or 10% voting power in the Company.

Further, MCA vide its aforesaid General Circular has clarified that in case of Companies falling under Section 108 read with rule 20 the concept of demand for poll is redundant.



Manner of voting by shareholders present in meeting if Company falls under purview of Section 108:-

It has been clarified by the circular that since these companies are mandatorily required to provide e-voting facility to its shareholders where the Principle of “One share - One vote” is recognized, therefore the meeting should be regulated accordingly by the Chairman.

Regulation of meeting by the Chairman:-

The chairman is authorized to regulate the meeting by virtue of Section 109(6) & aforesaid circular. The procedure has been jotted down in this article.

❖ By voting electronically:-



As per Section 108 read with rule 20, every listed company and companies having more than 1000 shareholders are required to give e-voting option to their shareholders.

Further, as per revised Clause 35B (2) of listing agreement applicable from 17th April, 2014 every listed company agrees to provide to its shareholders who do not have access to e-voting facility, option to vote through postal ballot.

But, as per the circular issued by MCA it not necessary for a company to provide postal ballot facility to shareholders in case where rule 20 (i.e. e-voting) is applicable. This is however contradictory with Clause 35B (2) of listing agreement.

As per decided case of Supreme Court, in case of listed companies listing agreement shall prevail in comparison to company law. Therefore, in case of listed companies option for postal ballot is also to be provided to shareholders who do not have access to e voting facility.



PROCEDURE FOR POLL AT GENERAL MEETING:-

A. Documents required:-

1. Polling Papers(MGT-12)
2. Register of Members, attendance register(including attendance slips) and proxy register
3. Specimen signatures of members (to be coordinated with the RTA) and proxy forms received (MGT-11)
4. Board Resolution under section 113 (Representation of body corporate)
5. e-voting scrutinizer's report and ballot papers received in pursuance of clause 35B (2) of listing agreement

B. Procedure:-

1. The scrutinizer shall distribute the polling paper to the members & proxies and lock an empty box in their presence.
2. After voting, he will open the box in presence of at least 2 witnesses.
3. He shall count the votes and check the following things while doing so:-
 - a. The person voting is member in register of members during book closure.
 - b. The person is present at the meeting, from attendance register.
 - c. Validity of signature of the person signing, from specimen signatures.
 - d. In case, person voting is a proxy, then proxy registers and forms.
 - e. In case member a body corporate, authorization through Board resolution.
 - f. In cases where e-voting option is also provided technical support should be provided to the scrutinizer for orderly conduct of poll. It should be ensured that members who have voted electronically or who have casted their vote through ballot paper by exercising their right under 35B (2) of listing agreement, are not exercising their voting right again at the general meeting. This can be confirmed from e-voting scrutinizers report.
 - g. Incomplete polling papers to be taken as invalid.
4. In case, there is doubt upon validity of proxy, validity shall be decided in consultation with the chairman.
5. The scrutinizer thereafter, prepare his report in form MGT-13 and submit it to the chairman who shall counter-sign the same, within 7 days from date of taking of poll.

CONTRADICTION:

As per rule 21(2) report of scrutinizer on poll shall be submitted to the Chairman of the meeting within seven days from the date the poll is taken.

But, as per rule 20(3)(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.

In, light of above provisions it can be interpreted that the result of poll has to be mandatorily be given by the scrutinizer within 2 days (not seven) to ensure compliance with rule 20(3)(xiv).

Who can be appointed as scrutinizer?

Scrutinizer for e-voting

As per rule 20(3) (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.

Scrutinizer for poll

As per Section 109(5) The Chairman shall appoint such number of persons as he deems necessary to scrutinize the poll process and report thereon to him.

Is it necessary that e-voting scrutinizer be appointed as scrutinizer at General meeting?

No, from answer to the previous question it is evident that both the scrutinizers can be different.

However, due to complications occurring from e-voting, it is advisable that the scrutinizer appointed for e-voting be also appointed as scrutinizer for poll to be conducted at general meeting. For, this it should be ensured that the scrutinizer be a member of the Company entitled to attend the General Meeting, so that he can be selected as scrutinizer for poll also.

Suggestions, comments and queries solicited

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